

Calendar No. 474

103^D CONGRESS
2^D SESSION

S. 2203

[Report No. 103–288]

To improve the administration of export controls, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 16 (legislative day, JUNE 7), 1994

Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs,
reported the following original bill; which was read twice and placed on
the calendar

A BILL

To improve the administration of export controls, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Export Administration and Enhancement Act of 1994”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXPORT CONTROLS

- Sec. 101. Short title
- Sec. 102. Findings and policies.
- Sec. 103. Definitions.
- Sec. 104. General provisions.
- Sec. 105. National security, nonproliferation, and foreign policy control authorities.
- Sec. 106. Short supply controls.
- Sec. 107. Foreign boycotts.
- Sec. 108. Procedures for processing export license applications; other inquiries.
- Sec. 109. Violations.
- Sec. 110. Enforcement.
- Sec. 111. Authority and procedures.
- Sec. 112. Missile proliferation control violations.
- Sec. 113. Chemical and biological weapons proliferation sanctions.
- Sec. 114. Annual report.
- Sec. 115. Effects on other Acts.
- Sec. 116. Authorization of appropriations.
- Sec. 117. Effective date.
- Sec. 118. Savings provisions.
- Sec. 119. Conforming amendments.

TITLE II—ENVIRONMENTAL EXPORT PROMOTION ACT OF 1994

- Sec. 201. Short title.
- Sec. 202. Promotion of United States environmental exports.

1 **TITLE I—EXPORT CONTROLS**2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Export Administration
4 Act of 1994”.

5 **SEC. 102. FINDINGS AND POLICIES.**

6 (a) FINDINGS.—The Congress finds that—

7 (1) export controls are a part of a comprehen-
8 sive response to national security threats and United
9 States exports should be restricted only for signifi-
10 cant national security, nonproliferation, foreign pol-
11 icy, and short supply reasons;

12 (2) the proliferation of weapons of mass de-
13 struction, their delivery systems, and other signifi-

1 cant military capabilities has become one of the most
2 serious threats to world peace and to United States
3 national security;

4 (3) exports of certain commodities, technology,
5 and software may adversely affect the national secu-
6 rity and foreign policy of the United States by mak-
7 ing a significant contribution to the military poten-
8 tial of individual countries or by disseminating the
9 capability to design, develop, test, produce, stockpile,
10 or use weapons of mass destruction, missile delivery
11 systems, and other significant military capabilities;

12 (4) the national security of the United States
13 depends on a strong national defense and is ground-
14 ed in a strong national economy;

15 (5) since exports are essential to economic
16 strength in an increasingly global economy, economic
17 interests must play a key role in export control deci-
18 sions, and, therefore, the rigor of economic analysis
19 and data available in the decisionmaking process
20 must be enhanced;

21 (6) export restrictions that negatively affect the
22 United States industrial base may ultimately weaken
23 United States military capabilities and lead to de-
24 pendencies on foreign sources for key components;

1 (7) multilateral export controls are the most ef-
2 fective export controls, and consistent implementa-
3 tion and comprehensive enforcement measures to
4 maximize the effectiveness of multilateral controls
5 are of great importance;

6 (8) the multilateral export control system,
7 which helped contain military threats posed by the
8 former Soviet Bloc countries, should be replaced by
9 an effective and efficient multilateral export control
10 program furthering vital interests of the United
11 States in the post-Cold War era;

12 (9) except in the event that the United States
13 is the sole source of critical supplies, unilateral ex-
14 port controls may not be effective in influencing the
15 behavior of other governments and impeding access
16 by target countries to controlled items, and, there-
17 fore, unilateral controls may—

18 (A) impede access to United States sources
19 of supply without affecting the ability of target
20 countries to obtain controlled items elsewhere;

21 (B) permit foreign competitors to serve
22 markets that the United States denies to Amer-
23 ican firms and workers; and

1 (C) impair the reliability of United States
2 suppliers in comparison with their foreign com-
3 petitors;

4 (10) the United States export control system
5 should—

6 (A) not be overly restrictive or bureau-
7 cratic, or unnecessarily undermine the competi-
8 tive position of American industry; and

9 (B) be efficient, responsive, transparent,
10 and effective; and

11 (11) minimization of restrictions on exports of
12 agricultural commodities and products is of critical
13 importance to—

14 (A) the maintenance of a sound agricul-
15 tural sector;

16 (B) a positive contribution to the balance
17 of payments;

18 (C) reducing the level of Federal expendi-
19 tures for agricultural support programs; and

20 (D) United States cooperation in efforts to
21 eliminate malnutrition and world hunger.

22 (b) POLICY.—It is the policy of the United States—

23 (1) after fully weighing the impact on the econ-
24 omy of the United States, and only to the extent
25 necessary—

1 (A) to restrict the export of items that
2 would make a significant contribution to the
3 military potential of countries that would prove
4 detrimental to the national security of the
5 United States;

6 (B) to stem the proliferation of weapons of
7 mass destruction and the means to deliver such
8 weapons by controlling involvement and con-
9 tributions by United States persons to foreign
10 programs intended to design, develop, test,
11 produce, stockpile, or use chemical or biological
12 weapons, nuclear explosive devices, missile deliv-
13 ery systems, and other significant military ca-
14 pabilities and the means to design, develop,
15 test, produce, stockpile, or use such capabilities;

16 (C) to restrict the export of items where
17 necessary to significantly further the foreign
18 policy of the United States, including export
19 controls imposed on countries that threaten re-
20 gional stability or abuse the fundamental
21 human rights of their citizens;

22 (D) to use export controls as part of a
23 comprehensive effort to encourage other coun-
24 tries to take immediate steps to prevent the use
25 of their territories or resources to aid, encour-

1 age, or give sanctuary to those persons direct-
2 ing, supporting, or participating in acts of
3 international terrorism; and

4 (E) to restrict the export of items where
5 necessary to protect the domestic economy from
6 the excessive drain of scarce materials and to
7 secure the removal by foreign countries of re-
8 strictions on access to supplies where such re-
9 strictions—

10 (i) have or may have a serious infla-
11 tionary impact and have caused or may
12 cause a serious domestic shortage; or

13 (ii) have been imposed for purposes of
14 influencing the foreign policy of the United
15 States;

16 (2) to rely increasingly on the multilateral co-
17 ordination of controls through effective export con-
18 trol regimes;

19 (3) to lead international efforts to control the
20 proliferation of chemical and biological weapons, nu-
21 clear explosive devices, missile delivery systems, and
22 other significant military capabilities;

23 (4) to avoid unilateral action if it would damage
24 United States commercial interests without effec-

1 tively promoting United States national security,
2 nonproliferation, and foreign policy interests;

3 (5) to make every effort to achieve effective
4 multilateral export controls in all cases where the
5 United States imposes unilateral export controls;

6 (6) to streamline export licensing functions and
7 thereby better serve the exporting public by reducing
8 and eliminating overlapping, conflicting, and incon-
9 sistent regulatory burdens and create a more effi-
10 cient, responsive, transparent, and effective export
11 control process;

12 (7) to make all licensing decisions in a timely
13 manner to prevent placing United States exporters
14 at a competitive disadvantage;

15 (8) to ensure that control lists are periodically
16 updated to reflect the changing proliferation threat,
17 advances in technology, and a realistic appraisal of
18 what is beyond the reach of effective control and to
19 focus such control lists only on items that, if taken
20 together and if denied to target countries, would
21 carry out the policy of the United States to deny
22 such countries the ability to design, develop, test,
23 produce, stockpile, or use relevant conventional mili-
24 tary capability, weapons of mass destruction, their
25 delivery systems, or other capabilities the denial of

1 which are among the goals of United States export
2 control policy;

3 (9) to oppose restrictive trade practices or boy-
4 cotts fostered or imposed by foreign countries
5 against other countries that are friendly to the Unit-
6 ed States or against any United States person;

7 (10) to encourage and, in specific cases, require
8 United States persons engaged in the export of com-
9 modities, software, technology, and other informa-
10 tion to refuse to take actions, including furnishing
11 information or entering into or implementing agree-
12 ments, which have the effect of furthering or sup-
13 porting restrictive trade practices or boycotts fos-
14 tered or imposed by any foreign country against a
15 country friendly to the United States or against any
16 United States person; and

17 (11) to minimize restrictions on the export of
18 agricultural commodities and products.

19 **SEC. 103. DEFINITIONS.**

20 For purposes of this title, the following definitions
21 shall apply:

22 (1) **AFFILIATES.**—The term “affiliates” in-
23 cludes both governmental entities and commercial
24 entities that are controlled in fact by target coun-
25 tries.

1 (2) AUSTRALIA GROUP.—The terms “Australia
2 Group” and “AG” refer to the multilateral arrange-
3 ment in which the United States participates that
4 seeks to prevent the proliferation of chemical and bi-
5 ological weapons.

6 (3) BIOLOGICAL WEAPONS CONVENTION.—The
7 term “Biological Weapons Convention” refers to the
8 Convention on the Prohibition of the Development,
9 Production and Stockpiling of Bacteriological (Bio-
10 logical) and Toxin Weapons and on Their Destruc-
11 tion of 1972.

12 (4) CHEMICAL WEAPONS CONVENTION.—The
13 term “Chemical Weapons Convention” refers to the
14 Convention on the Prohibition of the Development,
15 Production, Stockpiling and Use of Chemical Weap-
16 ons and on Their Destruction of 1992.

17 (5) COMMODITY.—The term “commodity”
18 means any article, natural or manmade substance,
19 material, supply, or manufactured product, including
20 inspection and test equipment, and excluding tech-
21 nical data.

22 (6) CONTROL LIST.—The terms “Control List”
23 and “Commerce Control List” mean the list estab-
24 lished by the Secretary in accordance with section
25 104(f).

1 (7) COORDINATING COMMITTEE.—The terms
2 “Coordinating Committee” or “COCOM” refer to
3 the multilateral organization—

4 (A) in which the United States partici-
5 pated;

6 (B) that cooperated in restricting transfers
7 of strategic items to certain countries; and

8 (C) that existed until March 31, 1994.

9 (8) DEPARTMENT.—The term “Department”
10 means the Department of Commerce.

11 (9) EXPORT.—

12 (A) IN GENERAL.—The term “export”—

13 (i) means—

14 (I) an actual shipment, transfer,
15 or transmission of items out of the
16 United States; or

17 (II) a transfer to any person of
18 items either within the United States
19 or outside of the United States or to
20 an end user, end use, or destination
21 with the knowledge or intent that the
22 items will be shipped, transferred, or
23 transmitted outside the United States;
24 and

1 (ii) unless otherwise clear from the
2 context, includes the term “reexport”.

3 (B) SECRETARY’S AUTHORITY TO FUR-
4 THER DEFINE.—The Secretary may further de-
5 fine the term “export” by regulation to in-
6 clude—

7 (i) the transfer of an item in the
8 United States to an embassy or affiliate of
9 a country;

10 (ii) the disclosure of technology to a
11 foreign national to his or her home coun-
12 try;

13 (iii) a transfer of effective control
14 from one country to another over a sat-
15 ellite above the earth; and

16 (iv) such other shipments, transfers,
17 or transmissions as the Secretary deter-
18 mines appropriate.

19 (10) FACILITATION OF AN ACTIVITY.—The
20 term “facilitation of an activity” includes acting as
21 a freight forwarder, shipper, designated export or
22 import agent, consignee, purchasing agent, market-
23 ing agent, manufacturer, assembler, designer, fin-
24 ancier, or end user with respect to services or items
25 to be exported, transferred, or provided.

1 (11) FINANCIAL TRANSACTION.—The term “fi-
2 nancial transaction” means any transaction involv-
3 ing the exchange, transfer, crediting, debiting, de-
4 posit, withdrawal, or payment of currency, securities,
5 debt, credit, checks, other monetary instruments,
6 precious metals or minerals, or other items of value,
7 whether physically or by electronic means. The term
8 includes such transactions as the opening or drawing
9 down of letters of credit, the extension of a loan, the
10 receipt of payment, or the use of credit cards.

11 (12) FOREIGN PERSON.—The term “foreign
12 person” means any person other than a United
13 States person.

14 (13) GENERAL LICENSE.—The term “general
15 license” means a license established by the Secretary
16 for which no application is required and for which
17 no document is granted or issued, authorizing ex-
18 port.

19 (14) ITEM.—The term “item” means any com-
20 modity, technology, or software.

21 (15) MILITARILY CRITICAL TECHNOLOGIES
22 LIST.—The terms “Militarily Critical Technologies
23 List” and “MCTL” refer to the list established
24 under section 104(i).

1 (16) MISSILE.—The term “missile” means any
2 missile system or component listed in category I of
3 the MTCR Annex, and any other unmanned delivery
4 system or component of similar capability, including
5 specially designed production facilities for such sys-
6 tems.

7 (17) MISSILE TECHNOLOGY CONTROL RE-
8 GIME.—The terms “Missile Technology Control Re-
9 gime” and “MTCR” refer to the policy statement
10 and Guidelines between the United States, the
11 United Kingdom, the Federal Republic of Germany,
12 France, Italy, Canada, and Japan, announced on
13 April 16, 1987, to restrict sensitive missile-related
14 transfers based on the MTCR Annex, and any
15 amendments to the MTCR Annex or Guidelines.

16 (18) MTCR ADHERENT.—The term “MTCR
17 adherent” means a country that is a member of the
18 MTCR or that, pursuant to an international under-
19 standing to which the United States is a party, con-
20 trols MTCR equipment or technology in accordance
21 with the criteria and standards set forth in the
22 MTCR.

23 (19) MTCR ANNEX.—The term “MTCR
24 Annex” means the Equipment and Technology

1 Annex of the MTCR and any amendments or succes-
2 sors thereto.

3 (20) MTCR EQUIPMENT OR TECHNOLOGY.—
4 The terms “missile equipment or technology” and
5 “MTCR equipment or technology” mean those items
6 listed in category I or category II of the MTCR
7 Annex.

8 (21) MULTILATERAL CONTROL.—The term
9 “multilateral control” means an export control im-
10 posed by the United States and a country or coun-
11 tries representing a significant number of suppliers.

12 (22) NUCLEAR SUPPLIERS’ GROUP.—The terms
13 “Nuclear Suppliers’ Group” and “NSG” refer to the
14 multilateral arrangement in which the United States
15 participates, the purpose of which is to restrict the
16 transfer of items related to the nuclear fuel cycle,
17 nuclear explosive applications, or both.

18 (23) OTHERWISE ENGAGED IN THE TRADE
19 OF.—The term “otherwise engaged in the trade of”
20 means, with respect to a particular export or trans-
21 fer, to be a freight forwarder or designated export-
22 ing agent, or a consignee or end user of the item to
23 be exported or transferred.

24 (24) PERSON.—The term “person” includes—

1 (A) the single and plural of any individual,
2 corporation, partnership, business association,
3 society, trust, organization, or other group cre-
4 ated or organized under the laws of a country;
5 or

6 (B) any government, governmental body,
7 corporation, trust, agency, department, division,
8 or group operating as a business enterprise.

9 (25) PROTOCOL ON BIOLOGICAL WARFARE.—
10 The term “Protocol on Biological Warfare” refers to
11 the Protocol for the Prohibition of the Use in War
12 of Asphyxiating, Poisonous or Other Gases, and of
13 Bacteriological Methods of Warfare of 1925.

14 (26) REGIME, MULTILATERAL EXPORT CON-
15 TROL REGIME, MULTILATERAL REGIME.—The terms
16 “regime”, “multilateral export control regime”, and
17 “multilateral regime” refer to an arrangement of 2
18 or more countries to which the United States is a
19 party, or which the United States would seek to cre-
20 ate or join, brought together for the purpose of cur-
21 tailing access to controlled items by target countries
22 by means of cooperative export controls.

23 (27) REEXPORT.—The term “reexport” means
24 the shipment, transfer, transshipment, or diversion of

1 items that originated in the United States from one
2 foreign country to another.

3 (28) SECRETARY.—The term “Secretary”
4 means the Secretary of Commerce.

5 (29) SOFTWARE.—The term “software” means
6 a collection of one or more programs or
7 microprograms fixed in any tangible medium of ex-
8 pression.

9 (30) TARGET COUNTRY.—The term “target
10 country” means a country for which it is the objec-
11 tive under this title to deny or attempt to deny ac-
12 cess to items controlled under this title.

13 (31) TECHNOLOGY.—The term “technology”
14 means specific information necessary for the devel-
15 opment, production, or use of a product. The infor-
16 mation may take the form of technical data, includ-
17 ing blueprints, plans, diagrams, models, formulae,
18 tables, engineering designs and specifications, manu-
19 als, and instructions written or recorded on other
20 media or devices such as disk, tape, or read-only
21 memories, or the form of technical assistance, and
22 includes instruction, skills training, working knowl-
23 edge, or consulting services.

24 (32) TECHNICAL ADVISORY COMMITTEE.—The
25 term “technical advisory committee” means any

1 committee established in accordance with section
2 104(j).

3 (33) UNILATERAL CONTROL.—The term “uni-
4 lateral control” means a control that is not multilat-
5 eral.

6 (34) UNITED STATES.—The term “United
7 States” means the States of the United States, the
8 District of Columbia, and any commonwealth, terri-
9 tory, dependency, or possession of the United States,
10 and includes the outer Continental Shelf, as defined
11 in section 2(a) of the Outer Continental Shelf Lands
12 Act.

13 (35) UNITED STATES PERSON.—The term
14 “United States person” means, as determined under
15 regulations of the Secretary—

16 (A) any United States citizen, resident, na-
17 tional (other than an individual resident outside
18 of the United States and employed by other
19 than a United States person), or person within
20 the United States;

21 (B) any domestic concern (including any
22 permanent domestic establishment of any for-
23 eign concern); and

24 (C) any foreign subsidiary or affiliate (in-
25 cluding any permanent foreign establishment)

1 of any domestic concern that is controlled in
2 fact by such domestic concern.

3 (36) VALIDATED LICENSE.—The term “vali-
4 dated license” means a document issued by or under
5 the authority of the Secretary authorizing export.

6 (37) WEAPON OF MASS DESTRUCTION.—The
7 term “weapon of mass destruction” means any
8 chemical or biological weapon or nuclear explosive
9 device.

10 **SEC. 104. GENERAL PROVISIONS.**

11 (a) TYPES OF LICENSES.—The Secretary may re-
12 quire any type of validated or general license under such
13 terms and conditions as may be imposed by the Secretary
14 for the effective and efficient implementation of this title.

15 (b) RIGHT OF EXPORT.—No authority or permission
16 to export may be required under this title, or under regula-
17 tions issued under this title, except to carry out the poli-
18 cies set forth in section 102(b).

19 (c) AUTHORITY.—

20 (1) CONSULTATION REQUIRED.—Except as oth-
21 erwise specified in this title, the authority contained
22 in this title shall be exercised by the Secretary in
23 consultation with appropriate departments and agen-
24 cies.

1 (2) APPEARANCE BEFORE CONGRESS.—The
2 Secretary, Secretary of State, Secretary of Defense,
3 or the Secretary or head of any other department or
4 agency responsible for or assisting with the imple-
5 mentation of this title, shall appear in person to tes-
6 tify concerning any matter arising under this title
7 before the Committee on Foreign Affairs of the
8 House of Representatives and the Committee on
9 Banking, Housing, and Urban Affairs of the Senate,
10 at the request of the chair of any such committee.

11 (d) DELEGATION OF AUTHORITY.—The President
12 may delegate the power, authority, and discretion con-
13 ferred upon the President by this title to such depart-
14 ments, agencies, or officials of the Government as the
15 President may consider appropriate, except that no au-
16 thority under this title may be delegated to, or exercised
17 by, any official of any department or agency the head of
18 which is not appointed by the President, by and with the
19 advice and consent of the Senate. The President may not
20 delegate or transfer the President's power, authority, or
21 discretion to overrule or modify any recommendation or
22 decision made by the Secretary, the Secretary of Defense,
23 or the Secretary of State pursuant to this title.

24 (e) ANNUAL REVIEW.—

1 (1) REQUIREMENT; PURPOSES.—The President
2 shall direct the appropriate departments and agen-
3 cies to annually review the impact of export control
4 policies. Such review shall be used as the basis for
5 the President’s annual determination on the imposi-
6 tion, expansion, or extension of unilateral controls
7 under section 105(c) and for review of the Control
8 List, including United States proposals for revisions
9 of multilateral control lists.

10 (2) CONTENTS.—The review required under
11 paragraph (1) shall include—

12 (A) an economic impact assessment, for
13 each Control List category, describing the eco-
14 nomic consequences of export controls during
15 the preceding 12-month period, including esti-
16 mates of any lost United States exports and
17 jobs;

18 (B) a national security and nonprolifera-
19 tion impact assessment that—

20 (i) describes the impact that export
21 controls have had on advancing United
22 States objectives during the preceding 12-
23 month period;

1 (ii) analyzes the extent to which
2 United States unilateral controls are being
3 undermined by foreign suppliers; and

4 (iii) evaluates the effectiveness of mul-
5 tilateral regimes, as required under section
6 105(b)(7); and

7 (C) a foreign policy impact assessment de-
8 scribing the impact that export controls have
9 had on advancing United States foreign policy
10 objectives during the preceding 12-month period
11 and analyzing the extent to which United
12 States unilateral controls are being undermined
13 by foreign suppliers.

14 (3) TIME REQUIREMENT.—The annual review
15 required under this subsection shall be completed
16 not later than December 31 of each year.

17 (f) CONTROL LIST.—

18 (1) ESTABLISHMENT.—In accordance with the
19 procedures specified in section 105, the Secretary
20 shall establish, publish, and maintain the Control
21 List. The Control list shall—

22 (A) consist of dual-use goods and tech-
23 nology on which export and reexport controls
24 are imposed under this title;

1 (B) specify the performance and other
2 identifying characteristics of the controlled
3 items;

4 (C) identify the countries and, consistent
5 with intelligence requirements, end-users within
6 countries to which exports and reexports are
7 controlled;

8 (D) specify validated license requirements;

9 (E) be sufficiently specific and clear to
10 guide exporters and licensing officers in deter-
11 minations of licensing requirements under this
12 title; and

13 (F) specify whether the control is unilat-
14 eral or multilateral, and, if multilateral, indicate
15 the regime under which the item is controlled.

16 (2) ANNUAL REVIEW OF CONTROL LIST.—

17 (A) ACTION BY THE SECRETARY.—The
18 Secretary shall, in consultation with appropriate
19 departments and agencies, annually review all
20 items on the Control List—

21 (i) to ensure that requirements for
22 validated licenses are periodically removed
23 as goods and technology become obsolete
24 with respect to the objectives of the con-
25 trol; and

1 (ii) to add items to the lists, pursuant
2 to the procedures specified in section 105,
3 consistent with United States national se-
4 curity, nonproliferation, and foreign policy
5 interests.

6 (B) REVIEW ELEMENTS.—In conducting
7 each review under subparagraph (A), and based
8 on the most recent annual review required
9 under subsection (e), the Secretary shall, for
10 the 12-month period following the completion of
11 that review—

12 (i) identify the specific objectives of
13 the export controls for each country or
14 group of countries for which a validated li-
15 cense is required;

16 (ii) review the quantity and perform-
17 ance levels of controlled goods and tech-
18 nology and determine whether controls on
19 those goods and technology satisfy the ob-
20 jectives identified under clause (i);

21 (iii) evaluate the availability-in-fact of
22 controlled items in sufficient quantity and
23 comparable quality to target countries; and

1 (iv) identify items that should be tar-
2 geted to enhance efforts to combat pro-
3 liferation and other national security risks.

4 (C) CHANGES IN CONTROLS.—Pursuant to
5 section 105, after completing each review under
6 this paragraph, the Secretary shall, if war-
7 ranted by the findings of the review and after
8 consultation with appropriate departments and
9 agencies—

10 (i) remove, add, or maintain license
11 requirements;

12 (ii) modify license requirements, in-
13 cluding making such good or technology el-
14 igible for delivery under a distribution li-
15 cense or other license authorization for
16 multiple exports, or a general license;

17 (iii) eliminate, modify, or add a per-
18 formance threshold or other characteristic
19 upon which the requirement for a validated
20 license for such a good or technology is
21 based; and

22 (iv) modify the Control List in any
23 other appropriate way in accordance with
24 the results of each review.

25 (D) APPEAL TO PRESIDENT.—

1 (i) IN GENERAL.—The Secretary shall
2 inform appropriate departments and agen-
3 cies of changes to the Control List. If any
4 agency or department disagrees with a pro-
5 posed change to the Control List, the dis-
6 senting agency may appeal the decision to
7 the President not later than 20 days after
8 being informed of such change.

9 (ii) DETERMINATION.—Not later than
10 20 days after receipt of an appeal under
11 clause (i), the President shall notify the
12 Secretary of the President’s determination
13 with respect to the inclusion of such item
14 on the Control List.

15 (E) TIME REQUIREMENT.—The annual re-
16 view required under this paragraph shall be
17 completed not later than January 31 of each
18 year.

19 (F) HEARINGS.—The Secretary shall con-
20 duct a public hearing, not less frequently than
21 annually, to solicit information from all inter-
22 ested parties on all matters to be addressed in
23 each review conducted under this paragraph.

24 (3) MULTILATERAL LIST REVIEW.—

1 (A) PROPOSALS.—Based upon the annual
2 review required under paragraph (2), the Sec-
3 retary, in consultation with appropriate depart-
4 ments and agencies, shall develop United States
5 proposals to revise multilateral regime control
6 lists.

7 (B) NEGOTIATIONS.—The Secretary of
8 State, in consultation with appropriate depart-
9 ments and agencies, shall conduct negotiations
10 and develop negotiating positions with foreign
11 countries regarding multilateral arrangements
12 for restricting the export of items to carry out
13 this title.

14 (C) FREQUENCY.—The Secretary of State
15 shall seek to ensure that each multilateral re-
16 gime of which the United States is a member
17 shall review each item on its list of controlled
18 items not less than once every 2 years. If a
19 multilateral regime fails to review an entry on
20 its list of controlled items within 2 years of the
21 prior review, the Secretary of State shall pro-
22 pose a review by the relevant multilateral re-
23 gime of such an entry.

24 (g) CONSULTATIONS WITH THE CONGRESS.—The
25 President shall consult with and fully apprise the Con-

1 gress, including the Committee on Foreign Affairs of the
2 House of Representatives and the Committee on Banking,
3 Housing, and Urban Affairs of the Senate, on changes to
4 the Control List, export control policy, procedures, and
5 other developments related to this title.

6 (h) NOTIFICATION OF THE PUBLIC; CONSULTATION
7 WITH BUSINESS.—

8 (1) PUBLIC PARTICIPATION.—The Secretary
9 shall seek comments and recommendations from the
10 public concerning changes to the Control List and
11 shall keep the public fully apprised of changes in ex-
12 port control policy and procedures instituted in con-
13 formity with this title with a view to encouraging
14 trade.

15 (2) BUSINESS PARTICIPATION.—The Secretary
16 shall meet regularly with representatives of a broad
17 spectrum of enterprises, labor organizations, and
18 citizens interested in or affected by export controls,
19 in order to obtain their views on United States ex-
20 port control policy and the foreign availability of
21 items subject to controls.

22 (i) MILITARILY CRITICAL TECHNOLOGIES LIST.—

23 (1) ESTABLISHMENT.—The Secretary of De-
24 fense shall be primarily responsible for establishing
25 and maintaining the Militarily Critical Technologies

1 List. Such list shall identify equipment and tech-
2 nologies critical to the design, development, test,
3 production, stockpiling, or use of weapons of mass
4 destruction and other significant military capabili-
5 ties, including nuclear, biological, and chemical
6 weapons, and manned, and unmanned vehicles capa-
7 ble of delivering such weapons.

8 (2) CONSIDERATIONS.—In developing the
9 MCTL, primary emphasis shall be given to—

10 (A) development and production tech-
11 nology;

12 (B) test, inspection, and production equip-
13 ment;

14 (C) advanced materials, chemicals, and bi-
15 ological agents;

16 (D) unique software; and

17 (E) systems, subsystems, assemblies and
18 components.

19 (3) SPECIFICITY.—The MCTL shall be suffi-
20 ciently specific to guide the determinations of any
21 official exercising export licensing responsibilities
22 under this title. For purposes of completeness and
23 cross-reference, the MCTL shall include both dual-
24 use items controlled by this title and other militarily

1 critical items that may be controlled under other au-
2 thorities.

3 (4) INCLUSION ON CONTROL LIST.—Consistent
4 with the policies set forth in section 102(b) and with
5 the criteria stated in section 105, the Secretary and
6 the Secretary of Defense shall propose integration of
7 items on the MCTL into the Control List.

8 (5) DISAGREEMENTS RESOLVED BY THE PRESI-
9 DENT.—If the Secretary and the Secretary of De-
10 fense disagree as to whether any integration, dele-
11 tion, or other change to the MCTL should also be
12 reflected in the Control List, the President shall re-
13 solve the disagreement.

14 (6) REVIEW OF MCTL.—The Secretary of De-
15 fense shall establish a procedure for reviewing the
16 MCTL on an ongoing basis for the purpose of re-
17 moving items that are no longer militarily critical.
18 The Secretary of Defense may add to the MCTL
19 any item that the Secretary of Defense determines
20 is militarily critical, consistent with paragraph (1).

21 (7) CONTROLS OFFSET.—The establishment of
22 adequate export controls for militarily critical tech-
23 nology, equipment, and materials shall be accom-
24 panied by suitable reductions in the controls on the

1 products that incorporate that technology, equip-
2 ment, and material.

3 (j) TECHNICAL ADVISORY COMMITTEES.—

4 (1) APPOINTMENT.—

5 (A) IN GENERAL.—The Secretary may es-
6 tablish technical advisory committees on the
7 Secretary's own initiative or upon written re-
8 quest by representatives of a substantial seg-
9 ment of any industry that produces any item
10 subject to export controls under this title, or
11 being considered for such controls.

12 (B) MEMBERSHIP.—Each technical advi-
13 sory committee shall consist of representatives
14 of United States industry, individuals with tech-
15 nical expertise on national security and non-
16 proliferation matters, the Department, and such
17 other Government departments and agencies as
18 may be appropriate. The Secretary shall permit
19 the widest possible participation by the business
20 community on technical advisory committees es-
21 tablished under this subsection.

22 (2) AUTHORITIES AND RESPONSIBILITIES.—

23 Technical advisory committees established under
24 paragraph (1) shall advise and assist the Secretary
25 and any other Government department, agency, or

1 official to which the President delegates authority
2 under this title, on all aspects of controls imposed or
3 proposed under this title. Such committees, if they
4 have expertise in such matters, shall be consulted on
5 issues involving—

6 (A) revisions of the Control List, as pro-
7 vided in subsection (f), including United States
8 proposals for revisions to multilateral control
9 lists;

10 (B) the imposition, expansion, or extension
11 of any export controls;

12 (C) foreign availability of items controlled
13 under this title;

14 (D) technical matters;

15 (E) worldwide availability and actual utili-
16 zation of production technology;

17 (F) licensing procedures that affect the
18 level of export controls applicable to any item;

19 (G) the issuance of regulations;

20 (H) the impact and interpretation of exist-
21 ing regulations;

22 (I) processes and procedures for review of
23 licenses and policy; and

24 (J) any other issues relating to actions de-
25 signed to carry out this title.

1 (3) OTHER CONSULTATION PERMITTED.—Noth-
2 ing in this subsection shall prevent any agency of
3 the United States from consulting, at any time, with
4 any person representing industry or the general pub-
5 lic, regardless of whether such person is a member
6 of a technical advisory committee. Members of the
7 public shall be given a reasonable opportunity, pur-
8 suant to regulations prescribed by the Secretary, to
9 present evidence to such committees.

10 (4) REIMBURSEMENT.—Upon request of any
11 member of any technical advisory committee, the
12 Secretary may reimburse such member for travel,
13 subsistence, and other necessary expenses incurred
14 by the member in connection with the member's du-
15 ties on the technical advisory committee, as the Sec-
16 retary determines to be appropriate.

17 (5) ADMINISTRATIVE PROVISIONS.—Each tech-
18 nical advisory committee shall elect a chairperson,
19 and shall meet at least every 3 months at the call
20 of the chairperson, unless the chairperson deter-
21 mines, in consultation with the other members of the
22 committee, that a meeting is not necessary to
23 achieve the purposes of this subsection. Each tech-
24 nical advisory committee shall be terminated not
25 later than 2 years after the date of its appointment,

1 unless extended by the Secretary for additional 2-
2 year periods. The Secretary shall consult each tech-
3 nical advisory committee on termination or extension
4 of that committee.

5 (6) DISCLOSURES TO COMMITTEES.—

6 (A) CONSISTENT WITH NATIONAL SECU-
7 RITY.—To facilitate the work of the technical
8 advisory committees, the Secretary, in conjunc-
9 tion with other departments and agencies par-
10 ticipating in the administration of this title,
11 shall disclose to each appropriate committee
12 adequate information, consistent with national
13 security, pertaining to the reasons for the ex-
14 port controls that are in effect or contemplated
15 for the items or policies for which that commit-
16 tee furnishes advice.

17 (B) FREEDOM OF INFORMATION ACT EX-
18 EMPTION.—Information provided by and to the
19 technical advisory committees shall not be sub-
20 ject to disclosure under section 552 of title 5,
21 United States Code, and such information shall
22 not be published or disclosed unless the Sec-
23 retary determines that withholding such infor-
24 mation is contrary to the national interest.

1 (k) FEES.—No fee may be charged in connection
2 with the submission or processing of an export license
3 application.

4 **SEC. 105. NATIONAL SECURITY, NONPROLIFERATION, AND**
5 **FOREIGN POLICY CONTROL AUTHORITIES.**

6 (a) AUTHORITY.—

7 (1) IN GENERAL.—To carry out the policies
8 stated in section 102(b), the President may—

9 (A) prohibit or curtail the export of any
10 item subject to the jurisdiction of the United
11 States or exported by any person subject to the
12 jurisdiction of the United States; and

13 (B) restrict the financing, transporting, or
14 other servicing or facilitation of such transfer.

15 (2) ADDITIONAL AUTHORITY.—In accordance
16 with paragraph (1), the President may prohibit or
17 curtail the transfer of goods or technology within the
18 United States to embassies and affiliates of target
19 countries. For purposes of this paragraph, the term
20 “affiliates” includes both governmental entities and
21 commercial entities that are controlled in fact by
22 target countries.

23 (b) MULTILATERAL CONTROLS.—

24 (1) IN GENERAL.—The President shall seek
25 United States membership in multilateral arrange-

1 ments that are intended to secure effective achieve-
2 ment of the policies set forth in section 102(b).

3 (2) CRITERIA.—Export controls may be im-
4 posed, expanded, or extended under this section only
5 if—

6 (A) the President determines that the ex-
7 port controls are essential to advancing the na-
8 tional security, nonproliferation, or foreign poli-
9 cies of the United States, as stated in section
10 102(b); and

11 (B) like-minded countries have agreed with
12 the United States on the utility of such export
13 controls in obtaining a shared objective and
14 procedures for implementing that objective.

15 (3) NEGOTIATIONS.—

16 (A) COUNTRIES PARTICIPATING IN CER-
17 TAIN AGREEMENTS.—The Secretary of State, in
18 consultation with appropriate departments and
19 agencies, shall conduct negotiations with those
20 countries participating in the MTCR, the Aus-
21 tralia Group, the Nuclear Suppliers' Group, and
22 other similar regimes that may be established,
23 regarding their cooperation in restricting the
24 export of items in order to carry out the policies
25 stated in section 102(b). Such negotiations shall

1 address, among other issues, which items
2 should be subject to multilaterally agreed upon
3 export restrictions, and the implementation of
4 the restrictions consistent with this title.

5 (B) OTHER COUNTRIES.—The Secretary of
6 State, in consultation with appropriate depart-
7 ments and agencies, shall be responsible for
8 conducting negotiations with any country or
9 groups of countries not referred to in subpara-
10 graph (A) regarding cooperation in restricting
11 the export of items consistent with this title.

12 (4) OBJECTIVES FOR MULTILATERAL EXPORT
13 CONTROL REGIMES.—For purposes of creating effec-
14 tive multilateral export controls and strengthening
15 the controls imposed by export control regimes, the
16 Secretary of State shall, with respect to each export
17 control regime, pursue negotiations with other mem-
18 bers of such regime to accomplish the following ob-
19 jectives:

20 (A) ESTABLISHMENT OF VERIFIABLE EX-
21 PORT CONTROLS.—Establishment of verifiable,
22 effective export control systems by regime mem-
23 bers that result in comparable implementation,
24 enforcement, sanctions, and statutes of limita-
25 tions sufficient to deter potential violations.

1 (B) ADMINISTRATION OF MULTILATERAL
2 REGIMES.—

3 (i) SECRETARIATS.—Agreement to
4 create secretariats for each nonprolifera-
5 tion regime, which would hold regular
6 meetings of the regime members so that
7 such regime members can establish regime
8 rules, and establish procedures for the use
9 of databases and the sharing of informa-
10 tion about the licensing systems and items
11 licensed by each national authority that is
12 a member of the regime.

13 (ii) PERIODIC MEETINGS.—Periodic
14 meetings of high-level representatives of
15 governments participating in the regime
16 for the purpose of coordinating national
17 export control policies and issuing policy
18 guidance.

19 (iii) REGULAR CONSULTATION.—Es-
20 tablishment of procedures for regular con-
21 sultation among members of the regime on
22 proposed export license applications to as-
23 sess the licensing status of exports and to
24 ensure the reliability of end users.

1 (iv) ENFORCEMENT PROCEDURES.—

2 Development of effective procedures for en-
3 forcing the export controls agreed upon by
4 the regime, including adequate training
5 and authority for enforcement officers to
6 investigate and prevent illegal exports.

7 (C) DEVELOPMENT OF LISTS AND VER-
8 IFICATION PROCESS.—

9 (i) COMMON LIST.—Development of a
10 common list of commodities and technology
11 to which export controls are applied, and a
12 common list of countries and end users,
13 where applicable, to which exports are con-
14 trolled by members of the regime.

15 (ii) DOCUMENTATION PROCEDURES.—
16 Development of a common system of ex-
17 port control documentation to verify the
18 proposed movement of commodities and
19 technology.

20 (iii) VIOLATIONS INFORMATION EX-
21 CHANGE.—Establishment of procedures for
22 the coordination and exchange of informa-
23 tion concerning violations of controls
24 agreed to by the regime members.

1 (iv) INTELLIGENCE INFORMATION EX-
2 CHANGE.—Establishment of procedures for
3 the coordination and sharing of intelligence
4 information on target countries and con-
5 trolled end users.

6 (5) OBJECTIVES FOR NATIONAL SYSTEMS.—
7 The Secretary of State, in consultation with appro-
8 priate departments and agencies, shall take steps to
9 attain the cooperation of multilateral regime mem-
10 bers in the effective implementation of export control
11 systems and in the establishment and maintenance
12 of such multilateral regimes. The Secretary of State
13 shall seek the inclusion in the national export control
14 systems of regime members of—

15 (A) national laws providing sufficient en-
16 forcement authorities, civil and criminal pen-
17 alties, and statutes of limitations sufficient to
18 deter potential violations and punish violators;

19 (B) a program to evaluate export license
20 applications that includes sufficient technical
21 expertise to assess the licensing status of ex-
22 ports and ensure the reliability of end users;

23 (C) an enforcement mechanism that pro-
24 vides authority for trained enforcement officers
25 to investigate and prevent prohibited exports;

1 (D) a system of export control documenta-
2 tion to verify the movement of items;

3 (E) procedures for the coordination and
4 exchange of information concerning licensing,
5 end users, and enforcement; and

6 (F) adequate national resources devoted to
7 carrying out subparagraphs (A) through (E).

8 (6) PUBLICATION OF ELEMENTS OF MULTILAT-
9 ERAL CONTROL REGIMES.—Consistent with arrange-
10 ments in, and commitments required by, multilateral
11 regimes of which the United States is a member, not
12 later than 6 months after the date of enactment of
13 this Act and not later than 2 months after joining
14 or organizing a new multilateral regime, the Sec-
15 retary, in consultation with appropriate departments
16 and agencies, shall publish in the Federal Register—

17 (A) the purposes of the export control re-
18 gime;

19 (B) a list of member countries;

20 (C) the licensing policy of the regime;

21 (D) a list of items subject to controls, to-
22 gether with all public notes, understandings,
23 and other aspects of such agreement and all
24 changes thereto;

1 (E) a list of any target countries or re-
2 gions, target end uses, and target end users (in-
3 cluding any projects of concern);

4 (F) rules of interpretation;

5 (G) major policy actions; and

6 (H) the rules and procedures of the regime
7 for establishing and modifying information re-
8 ferred to in this paragraph and for reviewing
9 export license applications, as provided for by
10 the regime.

11 The Secretary shall publish any changes in the in-
12 formation referred to in this paragraph not later
13 than 2 months after adoption of such changes by a
14 multilateral regime of which the United States is a
15 member.

16 (7) ANNUAL EVALUATION OF EFFECTIVENESS
17 OF MULTILATERAL CONTROL REGIMES.—Not less
18 frequently than annually, the Secretary shall evalu-
19 ate the effectiveness of each multilateral export con-
20 trol regime of which the United States is a member.

21 The evaluations shall—

22 (A) examine the extent to which each mul-
23 tilateral regime and its members, including the
24 United States, meet the objectives described in
25 paragraphs (4) and (5); and

1 (B) identify—

2 (i) countries, members and
3 nonmembers, that are sources of foreign
4 availability for each item controlled by the
5 regime;

6 (ii) countries that pose risks for di-
7 verting controlled items to target countries,
8 target end uses, or target end users; and

9 (iii) items not controlled by the regime
10 that the United States believes should be
11 controlled if the multilateral regime is to
12 achieve its objectives.

13 (8) INCENTIVES FOR PARTNERSHIP.—Consist-
14 ent with the policies stated in section 102(b) and the
15 objectives, rules, and guidelines of an individual mul-
16 tilateral control regime, the Secretary, in consulta-
17 tion with appropriate departments and agencies, and
18 based upon the evaluation required under paragraph
19 (7)—

20 (A) may provide for exports free of vali-
21 dated license requirements to and among mem-
22 bers of the multilateral regime for items subject
23 to controls under such a multilateral regime, if
24 the members have met the objectives described
25 in paragraph (5); and

1 (B) may adjust licensing policies for access
2 to items controlled pursuant to this title de-
3 pending on the degree of adherence to the ob-
4 jectives described in paragraph (5) of a country
5 or other entity to the export control policies of
6 this section.

7 (9) SUPPORT OF OTHER COUNTRIES' EXPORT
8 CONTROL PROGRAMS.—The Secretary may partici-
9 pate in the education and training of officials of
10 other countries on the principles and procedures for
11 the implementation of effective export controls.

12 (10) SUCCESSOR REGIME TO COCOM.—

13 (A) SPECIAL INTERIM LICENSING PROCE-
14 DURE FOR SECRETARY OF DEFENSE.—

15 (i) RIGHT OF REVIEW.—In addition to
16 any authority provided under section 108,
17 and until the President makes a certifi-
18 cation under subparagraph (C), the Sec-
19 retary of Defense—

20 (I) may review any proposed ex-
21 port of any good or technology to any
22 country to which exports are con-
23 trolled for national security purposes;
24 and

1 (II) if the Secretary of Defense
2 determines that the export of such
3 good or technology would make a sig-
4 nificant contribution to the military
5 potential of any such country that
6 would prove detrimental to the na-
7 tional security of the United States,
8 shall recommend to the President that
9 such export be disapproved.

10 (ii) DIFFERING RECOMMENDA-
11 TIONS.—If the Secretary of Defense makes
12 a recommendation to the President pursu-
13 ant to clause (i), the Secretary shall sub-
14 mit his or her recommendation to the
15 President on the request to export if the
16 recommendation of the Secretary differs
17 from that of the Secretary of Defense.

18 (iii) NOTIFICATION.—If the President
19 notifies the Secretary, not later than 20
20 days after receiving a recommendation
21 from the Secretary of Defense under clause
22 (i), that the President disapproves such ex-
23 port, no license or other authority may be
24 issued for the export of such good or tech-

nology to a country referred to in clause
(i).

(iv) SECRETARY'S DISCRETION.—If
the Secretary of Defense fails to make a
recommendation to the President within 21
days of receipt of an export license applica-
tion for review, or the President, not later
than 20 days after receiving a rec-
ommendation from the Secretary of De-
fense with respect to an export, fails to no-
tify the Secretary that the President ap-
proves or disapproves the export, the Sec-
retary shall approve or deny the request
for a license to export without regard to
such recommendation.

(B) SENSE OF THE CONGRESS REGARDING
NEGOTIATING OBJECTIVES.—It is the sense of
the Congress that the Secretary of State should
seek—

(i) to prevent arms and other sensitive
exports to Iran, Iraq, North Korea, Libya,
and any other nation certified by the Sec-
retary of State pursuant to subsection
(d)(3)(A) as providing State support for
acts of international terrorism, that are

1 contributing to tensions in the Middle East
2 and elsewhere, and to encourage other re-
3 gime members and prospective members to
4 do the same;

5 (ii) to further the process of engaging
6 countries formerly proscribed by the
7 COCOM in the establishment of effective
8 export control systems and in combating
9 the global proliferation of weapons and
10 sensitive dual-use technology; and

11 (iii) to close gaps in existing non-
12 proliferation regimes and improve the abil-
13 ity of the United States to enhance re-
14 gional stability through transparency and
15 multilateral coordination of national con-
16 trols on weapons and sensitive dual-use
17 items in a global and regional context.

18 (C) CERTIFICATION OF COCOM SUCCES-
19 SOR.—If the President determines that a suc-
20 cessor regime to the COCOM has been estab-
21 lished that serves the national security interests
22 of the United States, the President shall, imme-
23 diately upon such establishment, certify such
24 establishment to the Congress.

1 (D) APPEARANCE BEFORE CONGRESS.—

2 Not later than 30 days after the date of enact-
3 ment of this Act and once during every 6-month
4 period thereafter until a certification is made
5 under subparagraph (C), the Secretary and the
6 Secretaries of State and Defense shall transmit
7 a report to the Congress and appear in person
8 to testify before the Committee on Foreign Af-
9 fairs of the House of Representatives and the
10 Committee on Banking, Housing, and Urban
11 Affairs of the Senate on their progress toward
12 the establishment of a successor regime to the
13 COCOM.

14 (c) UNILATERAL CONTROLS.—

15 (1) DETERMINATION AND CRITERIA.—Based
16 upon the review required by section 104(e), the
17 President shall determine, not less frequently than
18 annually, whether the national interest requires that
19 the President terminate unilateral controls and regu-
20 lations or maintain them for an additional 12-month
21 period.

22 (2) JUSTIFICATION FOR IMPOSITION, EXPAN-
23 SION, OR EXTENSION OF UNILATERAL CONTROLS.—
24 Unilateral export controls may be imposed, expanded

1 (or extended) only if the President determines
2 that—

3 (A) such action is essential to advancing
4 the national security, nonproliferation, or for-
5 eign policies of the United States, as stated in
6 section 102(b), and the objective of the export
7 control is in the overall national interest of the
8 United States and cannot be attained by means
9 other than that export control;

10 (B) the export control would likely make
11 (and has made, as appropriate) substantial
12 progress toward achieving the intended purpose
13 of—

14 (i) changing, modifying, or constrain-
15 ing the undesirable conduct or policies of
16 the target country or countries;

17 (ii) denying access by the target coun-
18 try or countries to controlled items from
19 all sources; or

20 (iii) establishing multilateral coopera-
21 tion to deny the target country or coun-
22 tries access to controlled items from all
23 sources;

24 (C) the export control would be (and has
25 been, as appropriate) compatible with the for-

1 eign policy objectives of the United States and
2 with overall United States policy toward the
3 target country;

4 (D) the reaction of other countries to the
5 export control is not likely to render the control
6 ineffective (and has not rendered the control in-
7 effective, as appropriate) in achieving the in-
8 tended purpose or would be counter-productive
9 to United States policy interests;

10 (E) the adverse effect of the export control
11 on—

12 (i) the export performance of the
13 United States;

14 (ii) the competitive position of the
15 United States as a supplier of items; or

16 (iii) the economic well-being of indi-
17 vidual United States companies and their
18 employees and communities;

19 will not (and has not, as appropriate) exceed
20 the benefit from such control to the United
21 States national security, nonproliferation, or
22 foreign policy interests; and

23 (F) the United States has the ability to ef-
24 fectively enforce (and has effectively enforced,
25 as appropriate) the control.

1 (3) DURATION OF CONTROLS.—Any unilateral
2 control imposed under paragraph (2) shall expire by
3 operation of law on January 31 of each year.

4 (4) REPORT TO CONGRESS.—

5 (A) IN GENERAL.—A unilateral export con-
6 trol may not be imposed, expanded, or extended
7 under this subsection until the Secretary has
8 submitted to the Congress a report—

9 (i) specifying the purpose of the con-
10 trol;

11 (ii) specifying the determinations of
12 the President described in paragraph (2),
13 the basis for such determinations, and any
14 possible adverse foreign policy con-
15 sequences of the control;

16 (iii) describing the nature, the sub-
17 jects, and the results of, or the plans for
18 the consultation with, industry, the inter-
19 ested public, and other countries pursuant
20 to paragraph (6);

21 (iv) specifying the nature and results
22 of any alternative means attempted to
23 achieve the objective of the control, or the
24 reasons for imposing, expanding, or ex-

1 tending the control without attempting any
2 such alternative means;

3 (v) describing the availability from
4 other countries of items comparable to the
5 items subject to the export control, and de-
6 scribing the nature and results of the ef-
7 forts made to secure the cooperation of
8 foreign governments in controlling the for-
9 eign availability of such comparable goods
10 or technology;

11 (vi) describing how such control would
12 significantly further the policies of the
13 United States stated in section 102(b) or
14 would further its declared international ob-
15 ligations; and

16 (vii) assessing the economic con-
17 sequences of each such control, including
18 estimates of any loss of United States ex-
19 ports and jobs.

20 (B) CLASSIFIED PORTIONS.—To the extent
21 necessary to ensure the effectiveness of unilat-
22 eral export controls, portions of a report re-
23 quired by subparagraph (A) may be submitted
24 to the Congress on a classified basis, and shall
25 be subject to the provisions of section 111(d).

1 Each such report shall, at the time it is submit-
2 ted to the Congress, also be submitted to the
3 General Accounting Office for the purpose of
4 assessing the report's full compliance with this
5 subsection.

6 (5) SEEKING MULTILATERAL SUPPORT FOR
7 UNILATERAL CONTROLS.—The Secretary of State, in
8 consultation with appropriate departments and agen-
9 cies, shall continually seek support for unilateral ex-
10 port controls by other countries and by effective
11 multilateral control regimes.

12 (6) CONSULTATIONS.—

13 (A) WITH OTHER COUNTRIES.—When im-
14 posing, expanding, or extending unilateral ex-
15 port controls under this subsection, the Presi-
16 dent shall, at the earliest appropriate oppor-
17 tunity, consult with the countries with which
18 the United States maintains export controls co-
19 operatively and with such other countries as ap-
20 propriate to advise them of the reasons for the
21 unilateral action and to urge them to adopt
22 similar controls.

23 (B) WITH INDUSTRY AND OTHERS.—The
24 Secretary, in every possible instance, shall con-
25 sult with, and seek advice from, affected United

1 States public, industries, and technical advisory
2 committees and seek public comment before the
3 imposition, expansion, or extension of any uni-
4 lateral export control under this subsection, and
5 on such other matters as the Secretary consid-
6 ers appropriate.

7 (7) REGULATION INDICATING NATURE OF UNI-
8 LATERAL CONTROLS.—All unilateral controls im-
9 posed, expanded, or extended under this subsection
10 shall be indicated as such by regulation.

11 (d) IMPLEMENTATION.—

12 (1) MISSILE TECHNOLOGY.—The Secretary,
13 consistent with section 102(b) and subsections (b)
14 and (c) of this section, and in consultation with ap-
15 propriate departments and agencies—

16 (A) shall establish and maintain, as part of
17 the Control List, dual-use items on the MTCR
18 Annex;

19 (B) may include, as part of the Control
20 List, items that would provide a material con-
21 tribution to the design, development, test, pro-
22 duction, stockpiling, or use of missile delivery
23 systems which are not included in the MTCR
24 Annex, but which the United States proposes to

1 the other MTCR adherents for inclusion in the
2 MTCR Annex;

3 (C) shall require an individual validated li-
4 cense, consistent with MTCR arrangements,
5 for—

6 (i) any export of items on the list re-
7 ferred to under subparagraphs (A) and (B)
8 to any country; and

9 (ii) any export of items that the ex-
10 porter knows is destined for a project or
11 facility for the design, development, or
12 manufacture of a missile in a country that
13 is not an MTCR adherent;

14 (D) should, in general, deny licenses de-
15 scribed in subparagraph (C) if the ultimate con-
16 signee of the goods or technology is a facility in
17 a country that is not an adherent to the MCTR
18 and the facility is designed to develop or build
19 missiles; and

20 (E) should, in general, approve licenses de-
21 scribed in subparagraph (C) for the export of
22 items to a country that is an MTCR member or
23 adherent.

24 (2) CHEMICAL AND BIOLOGICAL WEAPONS.—

25 The Secretary, consistent with section 102(b) and

1 subsections (b) and (c) of this section, and in con-
2 sultation with appropriate departments and agen-
3 cies—

4 (A) shall establish and maintain, as part of
5 the Control List, dual-use items listed by the
6 Australia Group or by the Chemical Weapons
7 Convention;

8 (B) may include, as part of the Control
9 List, items that would provide a material con-
10 tribution to the design, development, test, pro-
11 duction, stockpiling, or use of chemical or bio-
12 logical weapons which are not listed by the Aus-
13 tralia Group, but which the United States pro-
14 poses to the other Australia Group adherents
15 for inclusion in its list of controlled items; and

16 (C) shall require an individual validated li-
17 cense, consistent with the arrangements in the
18 Australia Group and the Chemical Weapons
19 Convention, for—

20 (i) any export of items on the lists re-
21 ferred to in subparagraphs (A) and (B) to
22 any country, except as provided in sub-
23 section (b)(8); and

24 (ii) any export of items that the ex-
25 porter knows is destined for a project or

1 facility for the design, development, or
2 manufacture of a chemical or biological
3 weapon.

4 (3) INTERNATIONAL TERRORISM.—

5 (A) DETERMINATION BY SECRETARY OF
6 STATE.—The Secretary of State shall identify
7 those countries that have repeatedly provided
8 support for acts of international terrorism.

9 (B) PROHIBITION ON EXPORT AND REEX-
10 PORT.—Notwithstanding subsection (c)(2), ex-
11 ports and reexports of goods or technologies
12 controlled for national security and non-
13 proliferation reasons are prohibited to countries
14 identified under subparagraph (A).

15 (C) VALIDATED LICENSE REQUIREMENT.—
16 Notwithstanding subsection (c)(2), a validated
17 license shall be required, and applications shall
18 be subject to a general policy of denial, for ex-
19 ports and reexports to countries identified
20 under subparagraph (A) of goods and tech-
21 nologies that are not included under subpara-
22 graph (B), but that the Secretary of State de-
23 termines could—

1 (i) make a significant contribution to
2 the military potential of any such country,
3 including its military logistics capability; or
4 (ii) enhance the ability of any such
5 country to support acts of international
6 terrorism.

7 (D) NOTIFICATION TO CONGRESS.—The
8 Secretary and the Secretary of State shall no-
9 tify the Committee on Foreign Affairs of the
10 House of Representatives and the Committee
11 on Banking, Housing, and Urban Affairs and
12 the Committee on Foreign Relations of the Sen-
13 ate not less than 30 days before issuing any
14 validated license for exports and reexports to a
15 country identified under subparagraph (A).

16 (E) PUBLICATION.—Each identification by
17 the Secretary of State under subparagraph (A),
18 including each determination in effect on the
19 date of enactment of the Anti-terrorism and
20 Arms Export Amendments Act of 1989, shall
21 be published in the Federal Register.

22 (F) RESCISSION.—An identification made
23 by the Secretary of State under subparagraph
24 (A) may not be rescinded unless the President
25 submits to the Speaker of the House of Rep-

1 representatives and the chairman of the Committee
2 on Banking, Housing, and Urban Affairs and
3 the chairman of the Committee on Foreign Re-
4 lations of the Senate—

5 (i) before the proposed rescission
6 would take effect, a report certifying
7 that—

8 (I) there has been a fundamental
9 change in the leadership and policies
10 of the government of the country con-
11 cerned;

12 (II) the government of the coun-
13 try concerned is not supporting acts
14 of international terrorism; and

15 (III) the government of the coun-
16 try concerned has provided assurances
17 that it will not support acts of inter-
18 national terrorism in the future; or

19 (ii) not less than 45 days before the
20 proposed rescission would take effect, a re-
21 port justifying the rescission and certifying
22 that—

23 (I) the government of the country
24 concerned has not provided any sup-

1 port for international terrorism during
2 the preceding 6-month period; and

3 (II) the government of the coun-
4 try concerned has provided assurances
5 that it will not support acts of inter-
6 national terrorism in the future.

7 (4) HUMAN RIGHTS AND CRIME CONTROL.—

8 (A) APPROVAL OF CRIME CONTROL AND
9 DETECTION EXPORTS.—Crime control and de-
10 tection instruments and equipment shall be ap-
11 proved for export by the Secretary only pursu-
12 ant to a validated export license. Notwithstand-
13 ing any other provision of this title—

14 (i) any determination of the Secretary
15 of what items shall be included on the Con-
16 trol List as a result of the export restric-
17 tion imposed under this paragraph shall be
18 made with the concurrence of the Sec-
19 retary of State;

20 (ii) any determination of the Sec-
21 retary to approve or deny an export license
22 application to export crime control and de-
23 tection instruments or equipment shall be
24 made with the concurrence of the Sec-
25 retary of State; and

1 (iii) if the Secretary does not agree
2 with the Secretary of State with respect to
3 any determination under clause (i) or (ii),
4 the matter shall be referred to the Presi-
5 dent for resolution.

6 (B) EXCEPTIONS.—This paragraph does
7 not apply to exports to—

8 (i) Canada;

9 (ii) any country which is a member of
10 the European Union;

11 (iii) Norway;

12 (iv) Iceland;

13 (v) Japan;

14 (vi) Australia;

15 (vii) New Zealand; or

16 (viii) such other countries as the
17 President shall designate, consistent with
18 the purposes of this paragraph and section
19 502B of the Foreign Assistance Act of
20 1961.

21 (e) UNFAIR IMPACT ON UNITED STATES EXPORT-
22 ERS.—

23 (1) POLICY.—It is the policy of the United
24 States that no United States exporter should be
25 placed at a competitive disadvantage to its commer-

1 cial competitors because of differences between other
2 countries and the United States in export control
3 policies or practices unless relief from such controls
4 would create an inimical risk to the national secu-
5 rity, nonproliferation, or foreign policy interests of
6 the United States.

7 (2) RELIEF FROM EXPORT CONTROLS.—

8 (A) IN GENERAL.—The Secretary, upon
9 the Secretary's own initiative or upon petition
10 by any person, may grant relief from export
11 control requirements.

12 (B) FINDINGS REQUIRED.—Relief from ex-
13 port controls shall be granted in accordance
14 with paragraphs (3) and (4) if the Secretary
15 finds, after conducting an evaluation, that there
16 is evidence of any of the following:

17 (i) FOREIGN AVAILABILITY.—The
18 controlled item is available in fact, or the
19 Secretary anticipates it will be available in
20 the near term, following completion of the
21 evaluation, in sufficient quantity and com-
22 parable quality to the proposed countries
23 of export or end users from sources outside
24 of the United States, so that the require-
25 ment for a validated license is or would be

1 ineffective in achieving the purpose of the
2 control.

3 (ii) INEFFECTIVE CONTROLS.—The
4 controlled items are so widely available in
5 the United States that the Government
6 cannot enforce the controls effectively, un-
7 less the Secretary has reliable evidence
8 that the controls have been effective in de-
9 nying such target destination access to the
10 controlled items originating in the United
11 States.

12 (iii) INCONSISTENT CONTROLS.—In-
13 consistencies between the export control
14 policies, control lists, or procedures of gov-
15 ernments of foreign suppliers and the
16 United States effectively have placed or
17 would place the United States exporter at
18 a significant near-term commercial dis-
19 advantage to its competitors abroad.

20 (C) TIMING.—The Secretary shall initiate
21 an evaluation of a petition for relief under this
22 paragraph not later than 30 days after receipt
23 of such petition.

24 (3) DETERMINATION AND RESPONSE.—The
25 Secretary, in consultation with appropriate depart-

1 ments and agencies, shall make determinations of
2 facts and, if there are grounds for relief as provided
3 in paragraph (2), shall—

4 (A) consistent with multilateral regimes of
5 which the United States is a member or adher-
6 ent—

7 (i) change the controlled status of all
8 or some of the items in question so as to
9 eliminate any significant competitive dis-
10 advantage; or

11 (ii) selectively approve the sale of con-
12 trolled goods so as to eliminate any signifi-
13 cant competitive disadvantage; or

14 (B) seek multilateral support to eliminate
15 the source of foreign availability or to enhance
16 an export control to make it effective, except
17 that if such efforts fail to achieve multilateral
18 support to eliminate the source of foreign avail-
19 ability or to make the control effective, then,
20 not later than 300 days after the date of the
21 initiation of the Secretary's evaluation, the Sec-
22 retary shall—

23 (i) provide relief pursuant to subpara-
24 graph (A);

1 (ii) if the Secretary of State, in con-
2 sultation with appropriate departments
3 and agencies, finds that substantial
4 progress is being made to achieve multilat-
5 eral support to eliminate the source of for-
6 eign availability or to make the control ef-
7 fective—

8 (I) provide not more than 180
9 additional days to continue efforts to
10 secure multilateral agreement; and

11 (II) if efforts to secure multilat-
12 eral agreement under subclause (I)
13 fail, continue to seek multilateral sup-
14 port under the options set forth in
15 this subparagraph;

16 (iii) take actions against sources of
17 foreign availability pursuant to paragraph
18 (5); or

19 (iv) deny relief pursuant to paragraph
20 (4).

21 (4) LIMITATION ON RELIEF.—The Secretary
22 may not provide relief to a petitioner under para-
23 graph (2) if the Secretary or the President deter-
24 mines that the granting of such relief would create

1 an inimical risk to United States national security,
2 nonproliferation, or foreign policy interests.

3 (5) ACTIONS AGAINST SOURCES OF FOREIGN
4 AVAILABILITY.—

5 (A) IN GENERAL.—If the President deter-
6 mines that any sources of foreign availability
7 that are undermining United States unilateral
8 or multilateral controls pose a significant threat
9 to the national security or nonproliferation in-
10 terests of the United States, and if sections 112
11 and 113 do not otherwise apply, the President
12 may impose the following prohibitions on the
13 foreign suppliers that are the sources of the for-
14 eign availability for a period of not more than
15 5 years, and may remove such restrictions and
16 sanctions at any time during such 5-year
17 period:

18 (i) LICENSE DENIAL.—Denial of vali-
19 dated licenses for items controlled for na-
20 tional security and nonproliferation rea-
21 sons.

22 (ii) CONTRACT PROHIBITION.—Prohi-
23 bition on contracting with, and procure-
24 ment of products and services from, a
25 sanctioned person, by any department,

1 agency, or instrumentality of the United
2 States.

3 (iii) IMPORT PROHIBITION.—Prohibi-
4 tion on imports into the United States of
5 any or all of the products produced by a
6 sanctioned person.

7 (B) RELIEF FOR CERTAIN DEFENSE-RE-
8 LATED ITEMS.—The Secretary may not impose
9 import restrictions under subparagraph (A)
10 that are related—

11 (i) to the procurement of defense arti-
12 cles or defense services—

13 (I) under existing contracts or
14 subcontracts, including the exercise of
15 options for production quantities to
16 satisfy United States operational mili-
17 tary requirements;

18 (II) if the Secretary determines
19 that the foreign person or other entity
20 to which the controls would otherwise
21 be applied is a sole source supplier of
22 essential defense articles or services
23 and no alternative supplier can be
24 identified; or

1 (III) if the Secretary determines
2 that such articles or services are es-
3 sential to the national security under
4 defense coproduction agreements; or
5 (ii) to—

6 (I) products or services provided
7 under contracts or other binding
8 agreements (as such terms are defined
9 by the Secretary in regulations) en-
10 tered into before the date on which
11 the Secretary notifies the Congress of
12 the intention to impose the sanctions;

13 (II) spare parts;

14 (III) component parts, but not
15 finished products, essential to United
16 States products or production;

17 (IV) routine servicing and main-
18 tenance of products; or

19 (V) information and technology.

20 (6) NOTICE PROCEDURES.—

21 (A) DETERMINATIONS THAT CONTROLS
22 ARE NECESSARY.—In any case in which the
23 President or the Secretary determines that ex-
24 port controls under this subsection must be
25 maintained notwithstanding the existence of

1 facts that constitute a basis for granting relief,
2 the Secretary shall publish that determination,
3 together with a statement of its basis and the
4 estimated economic impact of the decision.

5 (B) NOTICE OF EVALUATIONS.—Whenever
6 the Secretary undertakes an evaluation under
7 paragraph (2), the Secretary shall publish no-
8 tice of the initiation of such evaluation in the
9 Federal Register.

10 (7) PROCEDURES FOR MAKING DETERMINA-
11 TIONS.—

12 (A) CONSULTATION.—During the conduct
13 of an evaluation under this subsection, the Sec-
14 retary shall consult with—

15 (i) the appropriate technical advisory
16 committees on the near term foreign avail-
17 ability of the item, based on the product
18 life cycle of the item; and

19 (ii) other appropriate departments
20 and agencies concerning the conduct of the
21 evaluation.

22 (B) TIMING.—The Secretary shall make a
23 determination as to whether relief is required
24 under paragraph (2) not later than 90 days
25 after the date on which the Secretary's evalua-

tion is commenced, and shall so notify the applicant.

(C) REVIEW.—If the Secretary has determined that relief from export controls under this subsection is appropriate, the Secretary shall, upon making such a determination, submit the determination for review to appropriate departments and agencies for consultation regarding the findings and selected relief. The Secretary's determination as to eligibility for relief and the nature of the relief to be granted does not require the concurrence or approval of any official, department, or agency to which such a determination is submitted.

(D) PUBLICATION.—Not later than 120 days from the date on which the Secretary initiates an evaluation under this subsection, the Secretary shall respond in writing to the petitioner and shall publish in the Federal Register, that—

(i) in any case in which the Secretary determines that relief should be granted, as applicable—

(I) the requirement of a validated license has been removed;

1 (II) the control status of all or
2 some of the items in question has
3 been changed so as to eliminate any
4 significant competitive disadvantage;

5 (III) the sale of controlled items
6 has been approved so as to eliminate
7 any significant competitive disadvan-
8 tage;

9 (IV) pursuant to paragraph (4),
10 export controls under this section will
11 be maintained notwithstanding any
12 finding under paragraph (2), and ne-
13 gotiations are being undertaken in ac-
14 cordance with subparagraph (F); or

15 (V) the United States rec-
16 ommendation to remove the validated
17 license requirement or change the con-
18 trol status will be submitted to a rel-
19 evant multilateral regime for consider-
20 ation for a period of not more than
21 180 days, beginning on the date of
22 the publication; or

23 (ii) a right to relief under paragraph
24 (2) has been determined not to exist.

1 (E) TIMELINESS.—The Secretary may not
2 require a license for the export of items that
3 are the subject of a petition under paragraph
4 (2) more than 120 days after the initiation of
5 the Secretary's evaluation under paragraph (2)
6 unless the Secretary has submitted a response
7 for publication as required under subparagraph
8 (D). In the case of a determination made under
9 paragraph (3) to refer a proposed export con-
10 trol relief to the relevant multilateral regime, no
11 license for such export may be required more
12 than 300 days after the date of the initiation of
13 the Secretary's evaluation under paragraph (2)
14 unless the Secretary or the President makes a
15 finding under paragraph (4) or other relief is
16 granted under paragraph (3).

17 (F) NEGOTIATIONS TO ELIMINATE FOR-
18 EIGN AVAILABILITY.—

19 (i) IN GENERAL.—In any case in
20 which export controls are maintained
21 under this section pursuant to paragraph
22 (4), the Secretary of State shall actively
23 pursue negotiations with the governments
24 of the appropriate foreign countries for the
25 purpose of eliminating such foreign avail-

1 ability or competitive disadvantage. Not
2 later than the commencement of such ne-
3 gotiations, the Secretary of State shall no-
4 tify in writing the Committee on Banking,
5 Housing, and Urban Affairs of the Senate
6 and the Committee on Foreign Affairs of
7 the House of Representatives that such ne-
8 gotiations have begun and why the Sec-
9 retary believes it is important that export
10 controls on the items involved be main-
11 tained to avoid a significant risk to the na-
12 tional security, nonproliferation, or foreign
13 policy interests of the United States.

14 (ii) AUTHORITY OF SECRETARY OF
15 STATE.—If the Secretary of State has rea-
16 son to believe that items subject to export
17 controls by the United States may become
18 available from other countries to target
19 countries and that such availability can be
20 prevented or eliminated by means of nego-
21 tiations with such other countries, the Sec-
22 retary of State shall promptly initiate ne-
23 gotiations with the governments of such
24 other countries to prevent such foreign
25 availability.

1 (8) SHARING OF INFORMATION.—Each depart-
2 ment or agency of the United States, including any
3 intelligence agency, and all contractors with any
4 such department or agency, shall, upon the request
5 of the Secretary and consistent with the protection
6 of intelligence sources and methods, furnish informa-
7 tion to the Department concerning foreign availabil-
8 ity of items subject to export controls under this sec-
9 tion. Consistent with the protection of intelligence
10 sources and methods and classification restrictions,
11 each such department or agency shall allow the De-
12 partment access to such information from a labora-
13 tory or other facility within such department or
14 agency.

15 (9) AVAILABILITY DEFINED.—

16 (A) IN GENERAL.—For purposes of this
17 subsection, the term “available in fact to target
18 countries” includes production or availability of
19 any item from any country—

20 (i) where the item is not restricted for
21 export to any target country; or

22 (ii) where the export restrictions are
23 determined by the Secretary to be ineffec-
24 tive.

1 (B) EXCEPTION.—For purposes of sub-
2 paragraph (A)(ii), the mere inclusion of items
3 on a list of items subject to multilateral export
4 controls shall not alone constitute credible evi-
5 dence of the effectiveness of export restrictions.

6 (10) CONGRESSIONAL NOTIFICATION AND RE-
7 PORTING REQUIREMENTS.—The Secretary shall an-
8 nually notify the Committee on Foreign Affairs of
9 the House of Representatives and the Committee on
10 Banking, Housing, and Urban Affairs of the Senate
11 of all petitions for relief made under this subsection,
12 the status of all such petitions, and the rationale for
13 all decisions related to such petitions.

14 (f) INTERNATIONAL OBLIGATIONS.—Notwithstand-
15 ing any other provision of this title containing limitations
16 on authority to control imports and exports, in order to
17 fulfill obligations of the United States pursuant to resolu-
18 tions of the United Nations, treaties, or other inter-
19 national agreements to which the United States is a party,
20 the Secretary, in consultation with appropriate depart-
21 ments and agencies, may impose controls on exports and
22 imports to and from a target country or region.

23 (g) INFORMATION SHARING.—The Secretary and ap-
24 propriate officials of the intelligence community, as deter-
25 mined by the Director of Central Intelligence, and other

1 appropriate Government agencies, shall establish a proce-
 2 dure for information sharing.

3 (h) DENIED PARTIES, SANCTIONED PARTIES, SPE-
 4 Cially DESIGNATED NATIONALS, AND OTHER PARTIES
 5 PRESENTING UNACCEPTABLE RISKS OF DIVERSION.—

6 (1) DENIED PARTIES, SANCTIONED PARTIES,
 7 SPECIALLY DESIGNATED NATIONALS.—The Sec-
 8 retary shall maintain and publish a list of—

9 (A) parties denied export privileges under
 10 this title;

11 (B) parties sanctioned for prohibited pro-
 12 liferation activity under this title or other stat-
 13 utes; and

14 (C) specially designated nationals named
 15 under the International Emergency Economic
 16 Powers Act.

17 (2) OTHER PARTIES.—The Secretary shall
 18 maintain a list of parties for whom licenses will be
 19 presumptively denied.

20 (i) FREEDOM OF INFORMATION ACT EXEMPTION.—
 21 The identity of parties maintained or disclosed pursuant
 22 to subsection (h)(2) is not subject to disclosure under sec-
 23 tion 552 of title 5, United States Code.

24 (j) NO EFFECT ON NUCLEAR NON-PROLIFERATION
 25 ACT OF 1978.—Nothing in this section shall be construed

1 to supersede the procedures published by the President
2 pursuant to section 309(c) of the Nuclear Non-Prolifera-
3 tion Act of 1978.

4 (k) EXCEPTION FOR HUMANITARIAN PURPOSES.—
5 This title does not authorize the imposition of export con-
6 trols on donations of items that are intended to meet basic
7 human needs, including food, educational materials, seeds,
8 hand tools, water resources equipment, clothing and shel-
9 ter materials, and basic household supplies.

10 (l) SPARE PARTS.—

11 (1) IN GENERAL.—An individual validated ex-
12 port license shall not be required for replacement
13 parts that are exported to replace, on a one-for-one
14 basis, parts that were in a good that was lawfully
15 exported from the United States.

16 (2) EXCEPTION.—Concurrent with the imposi-
17 tion or expansion of export controls under this sec-
18 tion, the President may determine that such export
19 controls will apply to replacement parts for parts in
20 goods subject to such export controls.

21 (m) ASSESSMENT OF ENCRYPTION SOFTWARE MAR-
22 KET.—

23 (1) PRESIDENTIAL REPORT REQUIRED.—Not
24 later than 150 days after the date of enactment of
25 this Act, the President shall submit a report to the

1 Committee on Banking, Housing, and Urban Affairs
2 of the Senate and the Committee on Foreign Affairs
3 of the House of Representatives.

4 (2) CONTENTS OF REPORT.—The report re-
5 quired by paragraph (1) shall—

6 (A) assess the current and future inter-
7 national market for computer software with
8 encryption;

9 (B) assess the impact of United States
10 encryption export controls on the international
11 competitiveness of the United States computer
12 software industry and their economic con-
13 sequences, including the impact on exports and
14 jobs in the United States computer software in-
15 dustry; and

16 (C) review the types, quality and market
17 penetration of foreign produced encryption soft-
18 ware products and any controls that influence
19 the international marketability of encryption
20 software products.

21 (3) CONSULTATION.—In preparing the report
22 required under paragraph (1), the President shall
23 consult with representatives of the United States
24 computer software industry. Confidential business
25 information provided by United States industry in

1 the course of preparing the report shall not be dis-
2 closed, except with the permission of the submitter
3 or when aggregated so that the source of the infor-
4 mation cannot be identified.

5 **SEC. 106. SHORT SUPPLY CONTROLS.**

6 (a) AUTHORITY.—

7 (1) IN GENERAL.—In order to carry out the
8 policy stated in section 102(b)(1)(E), the President
9 may prohibit or curtail the export of any item sub-
10 ject to the jurisdiction of the United States, or ex-
11 ported by any person subject to the jurisdiction of
12 the United States. In curtailing exports to carry out
13 the policy stated in section 102(b)(1)(E), the Presi-
14 dent shall allocate a portion of export licenses on the
15 basis of factors other than a prior history of expor-
16 tation. Such factors shall include—

17 (A) the extent to which a country engages
18 in equitable trade practices for United States
19 items; and

20 (B) treats the United States equitably in
21 times of short supply.

22 (2) PUBLICATION OF RESTRICTIONS.—The Sec-
23 retary shall publish in the Federal Register notice of
24 the imposition of quantitative restrictions on the ex-
25 port of any item to carry out the policy set forth in

1 section 102(b)(1)(E). Such notice shall invite all in-
2 terested parties to submit written comments during
3 the 15-day period beginning on the date of publica-
4 tion of the notice regarding the impact of such re-
5 strictions, and the method of licensing used to imple-
6 ment them.

7 (3) EXPORT LICENSE FEES.—Notwithstanding
8 section 104(k), in imposing export controls under
9 this section, the President’s authority shall include
10 the imposition of export license fees.

11 (b) MONITORING.—

12 (1) IMPACT ON THE ECONOMY.—In order to
13 carry out the policy stated in section 102(b)(1)(E),
14 the Secretary shall monitor exports and contracts
15 for exports, of any good (other than a commodity
16 subject to the reporting requirements of section 602
17 of the Agricultural Trade Act of 1978), if—

18 (A) the volume of such exports in relation
19 to domestic supply contributes, or may contrib-
20 ute, to an increase in domestic prices or a do-
21 mestic shortage; and

22 (B) such price increase or shortage has, or
23 may have, a serious adverse impact on any part
24 of the United States economy.

1 (2) TIMELINESS.—Any monitoring undertaken
2 in accordance with paragraph (1) shall commence at
3 a time adequate to assure that it will result in a
4 data base sufficient to enable policies to be devel-
5 oped, in accordance with the policy stated in section
6 102(b)(1)(E)—

7 (A) to mitigate a short supply situation or
8 serious inflationary price rise; or

9 (B) if export controls are needed, to permit
10 imposition of such controls in a timely manner.

11 (3) CONFIDENTIALITY.— Except as provided in
12 paragraph (4), information required to be furnished
13 to the Secretary in effecting monitoring in accord-
14 ance with paragraph (1) shall be confidential.

15 (4) REPORTS.—

16 (A) IN GENERAL.—The results of monitor-
17 ing undertaken in accordance with paragraph
18 (1) shall, to the extent practicable, be aggre-
19 gated and included in weekly reports setting
20 forth, for each item monitored—

21 (i) actual and anticipated exports;

22 (ii) the destination by country of such
23 item; and

24 (iii) the domestic and worldwide price,
25 supply, and demand.

1 (B) ALTERNATIVE TIMING.—Reports re-
2 quired under subparagraph (A) may be made
3 monthly if the Secretary determines that there
4 is insufficient information to justify weekly re-
5 ports.

6 (c) DOMESTICALLY PRODUCED CRUDE OIL.—

7 (1) GENERAL LIMITATION ON EXPORTS.—Not-
8 withstanding any other provision of this title and
9 section 28(u) of the Mineral Leasing Act, no domes-
10 tically produced crude oil transported by pipeline
11 over right-of-way granted pursuant to section 203 of
12 the Trans-Alaska Pipeline Authorization Act may be
13 exported from the United States, or from any of its
14 territories and possessions, except as provided in
15 paragraph (2).

16 (2) EXPORTS PERMITTED.—Crude oil subject to
17 the prohibition contained in paragraph (1) may be
18 exported only if—

19 (A) the President recommends such per-
20 mission to the Congress after making and pub-
21 lishing express findings that exports of such
22 crude oil, including exchanges—

23 (i) will not diminish the total quantity
24 or quality of petroleum refined within,
25 stored within, or legally committed to be

1 transported to and sold within the United
2 States;

3 (ii) will, not later than 3 months after
4 the initiation of such exports or changes,
5 result in—

6 (I) acquisition costs to the refin-
7 ers that purchase the imported crude
8 oil that are lower than the acquisition
9 costs such refiners would have to pay
10 for the domestically produced oil in
11 the absence of such an export or ex-
12 change; and

13 (II) not less than 75 percent of
14 such savings in costs being reflected
15 in wholesale and retail prices of prod-
16 ucts refined from such imported crude
17 oil;

18 (iii) will be made only pursuant to
19 contracts that may be terminated if the
20 crude oil supplies of the United States are
21 interrupted, threatened, or diminished;

22 (iv) are clearly necessary to protect
23 the national interests; and

24 (v) are in accordance with the provi-
25 sions of this title; and

1 (B) the President includes the findings
2 made under subparagraph (A) in the Presi-
3 dent's recommendation to the Congress and the
4 Congress, not later than 60 days after receiving
5 that recommendation, adopts a joint resolution
6 that approves such exports on the basis of those
7 findings.

8 (3) OIL SUPPLY AGREEMENT EXCEPTION.—

9 Notwithstanding any other provision of this section,
10 or any other provision of law, the President may ex-
11 port oil to any country pursuant to a bilateral inter-
12 national oil supply agreement entered into by the
13 United States with such country before June 25,
14 1979, or to any country pursuant to the Inter-
15 national Emergency Oil Sharing Plan of the Inter-
16 national Energy Agency.

17 (4) OCEAN TRANSPORTATION REQUIREMENT.—

18 Any ocean transportation of domestically produced
19 crude oil transported by pipeline over right-of-way
20 granted pursuant to section 203 of the Trans-Alaska
21 Pipeline Authorization Act shall be by vessels docu-
22 mented under section 12106 of title 46, United
23 States Code, if such crude oil—

24 (A) is exported to an adjacent foreign
25 country to be refined and consumed therein in

1 exchange for the same quantity of crude oil
2 being exported from that country to the United
3 States, and which exchange will result, through
4 convenience or increased efficiency of transpor-
5 tation, in lower prices for consumers of petro-
6 leum products in the United States, as de-
7 scribed in paragraph (2)(A)(ii);

8 (B) is temporarily exported for convenience
9 or increased efficiency of transportation across
10 parts of an adjacent foreign country and reen-
11 ters the United States; or

12 (C) is transported to Canada, to be
13 consumed therein, in amounts not to exceed an
14 annual average of 50,000 barrels per day (in
15 addition to exports under paragraph (2)).

16 (5) OIL EXPORTS FOR USE BY UNITED STATES
17 MILITARY FACILITIES.—For purposes of this sub-
18 section and of any other export controls imposed
19 under this title, shipments of crude oil, refined pe-
20 troleum products, or partially refined petroleum
21 products from the United States for use by the De-
22 partment of Defense or United States-supported in-
23 stallations or facilities shall not be considered to be
24 exports.

25 (d) AGRICULTURAL COMMODITIES.—

1 (1) APPROVAL BY SECRETARY OF AGRI-
2 CULTURE.—

3 (A) IN GENERAL.—The authority con-
4 ferred by this section shall not be exercised for
5 any agricultural commodity, including fats, oils,
6 animal hides, or skins, without the approval of
7 the Secretary of Agriculture. The Secretary of
8 Agriculture shall not approve the exercise of
9 such authority for any such commodity during
10 any period for which the supply of such com-
11 modity is determined by the Secretary of Agri-
12 culture to be in excess of the requirements of
13 the domestic economy, except to the extent that
14 the President determines that such exercise of
15 authority is required to carry out the policies
16 stated in subparagraph (A) or (C) of section
17 102(b)(1).

18 (B) COLLECTION OF DATA.—The Sec-
19 retary of Agriculture shall, by exercising the au-
20 thority which the Secretary of Agriculture has
21 under other applicable provisions of law, collect
22 data on export sales of animal hides and skins.

23 (2) AGRICULTURAL COMMODITIES PURCHASED
24 OR USED BY A FOREIGN COUNTRY.—Upon approval
25 of the Secretary, in consultation with the Secretary

1 of Agriculture, agricultural commodities purchased
2 by or for use in a foreign country may remain in the
3 United States for export at a later date free from
4 any quantitative limitations on export which may be
5 imposed to carry out the policy stated in section
6 102(b)(1)(E) subsequent to such approval. The Sec-
7 retary may not grant such approval unless the Sec-
8 retary receives adequate assurance and, in conjunc-
9 tion with the Secretary of Agriculture, finds that—

10 (A) such commodities will eventually be ex-
11 ported;

12 (B) neither the sale nor export thereof will
13 result in an excessive drain of scarce materials
14 and have a serious domestic inflationary im-
15 pact;

16 (C) storage of such commodities in the
17 United States will not unduly limit the space
18 available for storage of domestically owned com-
19 modities; and

20 (D) the purpose of such storage is to es-
21 tablish a reserve of such commodities for later
22 use, not including resale to or use by another
23 country.

24 (3) CONGRESSIONAL APPROVAL OF CON-
25 TROLS.—

1 (A) REPORT REQUIRED.—If the President
2 imposes export controls on any agricultural
3 commodity in order to carry out the policy stat-
4 ed in subparagraph (A), (C), (D), or (E) of sec-
5 tion 102(b)(1), the President shall immediately
6 transmit a report on such action to the Con-
7 gress, setting forth the reasons for the controls
8 in detail and specifying the periods of time, not
9 to exceed 1 year, that the controls are proposed
10 to be in effect. If the Congress, not later than
11 60 days after the date after receipt of the re-
12 port, adopts a joint resolution pursuant to
13 paragraph (4) approving the imposition of the
14 export controls, such controls shall remain in
15 effect for the period specified in the report, or
16 until terminated by the President, whichever oc-
17 curs first. If the Congress, within 60 days after
18 the date of receipt of such report, fails to adopt
19 a joint resolution approving such controls, then
20 such controls shall cease to be effective upon
21 the expiration of that 60-day period.

22 (B) EXCEPTIONS.—The provisions of sub-
23 paragraph (A) and paragraph (4) do not apply
24 to export controls that—

1 (i) are extended under this title if the
2 controls, when imposed, were approved by
3 the Congress under subparagraph (A), or
4 paragraph (4); or

5 (ii) are imposed on exports to a coun-
6 try as part of the prohibition or curtail-
7 ment of all exports to that country.

8 (4) APPROVAL BY JOINT RESOLUTION.—

9 (A) DEFINITION.—For purposes of this
10 paragraph, the term “joint resolution” means
11 only a joint resolution the matter after the re-
12 solving clause of which is as follows: “That pur-
13 suant to section 106(d)(3) of the Export Ad-
14 ministration Act of 1994, the President may
15 impose export controls as specified in the report
16 submitted to the Congress on _____.”,
17 with the blank space being filled with the ap-
18 propriate date.

19 (B) INTRODUCTION.—On the day on which
20 a report is submitted to the House of Rep-
21 resentatives and the Senate under paragraph
22 (3), a joint resolution on the export controls
23 specified in such report shall be introduced (by
24 request) in the House by the chairman of the
25 Committee on Foreign Affairs, for himself and

1 the ranking minority member of the Committee,
2 or by Members of the House designated by the
3 chairman and ranking minority member; and
4 shall be introduced (by request) in the Senate
5 by the majority leader of the Senate, for himself
6 and the minority leader of the Senate, or by
7 Members of the Senate designated by the ma-
8 jority leader and minority leader of the Senate.
9 If either House is not in session on the day on
10 which such a report is submitted, the joint reso-
11 lution shall be introduced in that House, as
12 provided in the preceding sentence, on the first
13 day thereafter on which that House is in ses-
14 sion.

15 (C) REFERRAL.—All joint resolutions in-
16 troduced in the House of Representatives shall
17 be referred to the appropriate committee and
18 all joint resolutions introduced in the Senate
19 shall be referred to the Committee on Banking,
20 Housing, and Urban Affairs.

21 (D) DISCHARGE FROM COMMITTEE.—If
22 the committee of either House to which a joint
23 resolution has been referred has not reported
24 the joint resolution at the end of 30 days after
25 its referral, the committee shall be discharged

1 from further consideration of the resolution or
2 of any other joint resolution introduced on the
3 same matter.

4 (E) CONSIDERATION PROCEDURES.—

5 (i) SENATE.—A joint resolution under
6 this paragraph shall be considered in the
7 Senate in accordance with the provisions of
8 section 601(b)(4) of the International Se-
9 curity Assistance and Arms Export Control
10 Act of 1976.

11 (ii) HOUSE OF REPRESENTATIVES.—

12 It shall be in order for the Committee on
13 Rules of the House of Representatives to
14 present for consideration a resolution of
15 the House of Representatives providing
16 procedures for the immediate consideration
17 of a joint resolution under this paragraph
18 which may be similar, if applicable, to the
19 procedures set forth in section 601(b)(4) of
20 the International Security Assistance and
21 Arms Export Control Act of 1976.

22 (F) CONSIDERATION AFTER PASSAGE BY
23 ONE HOUSE.—In the case of a joint resolution
24 described in subparagraph (A), if, before the
25 passage by one House of a joint resolution of

1 that House, that House receives a resolution on
2 the same matter from the other House, then—

3 (i) the procedure in the House shall
4 be the same as if no joint resolution has
5 been received from the other House; but

6 (ii) the vote on final passage shall be
7 on the joint resolution of the other House.

8 (5) COMPUTATION OF TIME.—In the computa-
9 tion of the period of 60 days referred to in para-
10 graph (3) and the period of 30 days referred to in
11 paragraph (4)(D), there shall be excluded the days
12 on which either House of Congress is not in session
13 because of an adjournment of more than 3 days to
14 a day certain or because of an adjournment of the
15 Congress sine die.

16 (6) EFFECT ON CONTRACTS TO EXPORT.—Any
17 export controls imposed under this section on any
18 agricultural commodity (including fats, oils, animal
19 hides, and skins) or on any forest product or fishery
20 product, shall not affect any contract to export en-
21 tered into before the date on which such controls are
22 imposed. For purposes of this paragraph, the term
23 “contract to export” includes an export sales agree-
24 ment and an agreement to invest in an enterprise
25 which involves the export of goods or technology.

1 (e) BARTER AGREEMENTS.—

2 (1) EXEMPTION AUTHORIZED.—The expor-
3 tation pursuant to a barter agreement of any item
4 that may be lawfully exported from the United
5 States, or for any item which may be lawfully im-
6 ported into the United States, shall be exempted, in
7 accordance with paragraph (2), from any quan-
8 titative limitation on exports (other than any report-
9 ing requirement) imposed to carry out the policy set
10 forth in section 102(b)(1)(E).

11 (2) FINDINGS REQUIRED.—The Secretary shall
12 grant an exemption under paragraph (1) if the Sec-
13 retary finds, after consultation with the appropriate
14 department or agency of the United States, that—

15 (A) for the period during which the barter
16 agreement is to be performed—

17 (i) the average annual quantity of the
18 item to be exported pursuant to the barter
19 agreement will not be required to satisfy
20 the average amount of such item estimated
21 to be required annually by the domestic
22 economy and will be surplus thereto; and

23 (ii) the average annual quantity of the
24 item to be imported will be less than the
25 average amount of such item estimated to

1 be required annually to supplement domes-
2 tic production; and

3 (B) the parties to such barter agreement
4 have demonstrated adequately that they intend,
5 and have the capacity, to perform such barter
6 agreement.

7 (3) DEFINITION.—For purposes of this sub-
8 section, the term “barter agreement” means any
9 agreement which is made for the exchange, without
10 monetary consideration, of any item produced in the
11 United States for any item produced outside of the
12 United States.

13 (4) APPLICABILITY.—This subsection shall
14 apply only to barter agreements entered into after
15 September 30, 1979.

16 (f) UNPROCESSED RED CEDAR.—

17 (1) EXPORT PROHIBITION.—No unprocessed
18 western red cedar logs (also referred to as “*Thuja*
19 *plicata*”) harvested from Federal or State lands may
20 be exported from the United States.

21 (2) EXCLUSION.—Unprocessed western red
22 cedar logs shall not be considered to be an agricul-
23 tural commodity for purposes of subsection (d).

24 (3) DEFINITION.—For purposes of this sub-
25 section, the term “unprocessed western red cedar”

1 means red cedar timber which has not been proc-
2 essed into—

3 (A) lumber of American Lumber Stand-
4 ards Grades of Number 3 dimension or better,
5 or Pacific Lumber Inspection Bureau Export
6 R-List Grades of Number 3 common or better;

7 (B) chips, pulp, and pulp products;

8 (C) veneer and plywood;

9 (D) poles, posts, or pilings cut or treated
10 with preservative for use as such and not in-
11 tended to be further processed; or

12 (E) shakes and shingles.

13 (4) EXEMPTION.—Unprocessed western red
14 cedar logs harvested from land located in Alaska are
15 exempt from this subsection.

16 (5) EFFECT ON EXISTING CONTRACTS.—The
17 export restrictions contained in this subsection, and
18 any other export controls imposed under this section
19 shall not affect any contract to harvest unprocessed
20 western red cedar from State lands which was en-
21 tered into before October 1, 1979, and the perform-
22 ance of which would make the red cedar available
23 for export.

24 **SEC. 107. FOREIGN BOYCOTTS.**

25 (a) PROHIBITIONS AND EXCEPTIONS.—

1 (1) REGULATIONS.—For the purpose of imple-
2 menting the policies stated in paragraphs (9) and
3 (10) of section 102(b), the President shall issue reg-
4 ulations prohibiting any United States person, with
5 respect to his or her activities in the interstate or
6 foreign commerce of the United States, from taking
7 or knowingly agreeing to take any of the following
8 actions with the intent to comply with, further, or
9 support any boycott fostered or imposed by a foreign
10 country against a country which is friendly to the
11 United States and which is not itself the object of
12 any form of boycott pursuant to United States law
13 or regulation:

14 (A) BUSINESS RELATIONS.—Refusing or
15 requiring any other person to refuse to do busi-
16 ness—

17 (i) with or in the boycotted country;

18 (ii) with any business concern orga-
19 nized under the laws of the boycotted
20 country;

21 (iii) with any national or resident of
22 the boycotted country; or

23 (iv) with any other person;

24 pursuant to an agreement with, a requirement
25 of, or a request from or on behalf of the boy-

1 cotted country. The mere absence of a business
2 relationship with or in the boycotted country
3 with any business concern organized under the
4 laws of the boycotted country, with any national
5 or resident of the boycotted country, or with
6 any other person, does not indicate the exist-
7 ence of the intent required to establish a viola-
8 tion of regulations issued to carry out this sub-
9 paragraph.

10 (B) EMPLOYMENT.—Refusing, or requiring
11 any other person to refuse to employ or other-
12 wise discriminate against any United States
13 person on the basis of race, religion, sex, or na-
14 tional origin of that person, or of any owner, of-
15 ficer, director, or employee of such person.

16 (C) DEMOGRAPHIC INFORMATION.—Fur-
17 nishing information with respect to the race, re-
18 ligion, sex, or national origin of any United
19 States person, or of any owner, officer, director,
20 or employee of such person.

21 (D) BUSINESS INFORMATION.—Furnishing
22 information about whether any person has, has
23 had, or proposes to have any business relation-
24 ship (including a relationship by way of sale,
25 purchase, or legal or commercial representation,

1 shipping or other transport, insurance, invest-
2 ment, or supply) with or in the boycotted coun-
3 try, with any business concern organized under
4 the laws of the boycotted country, with any na-
5 tional or resident of the boycotted country, or
6 with any other person known or believed to be
7 restricted from having any business relationship
8 with or in the boycotting country. Nothing in
9 this subparagraph shall prohibit the furnishing
10 of normal business information in a commercial
11 context, as defined by the Secretary.

12 (E) INFORMATION ON ASSOCIATIONS.—
13 Furnishing information about whether any per-
14 son is a member of, has contributed to, or is
15 otherwise associated with or involved in the ac-
16 tivities of any charitable or fraternal organiza-
17 tion which supports the boycotting country.

18 (F) FINANCIAL INCENTIVES.—Paying,
19 honoring, confirming, or otherwise implement-
20 ing a letter of credit which contains any condi-
21 tion or requirement compliance with which is
22 prohibited by regulations issued pursuant to
23 this paragraph. No United States person shall,
24 as a result of the application of this subpara-

1 graph, be obligated to pay or otherwise honor
2 or implement such letter of credit.

3 (2) EXCEPTIONS.—Regulations issued pursuant
4 to paragraph (1) shall provide exceptions for—

5 (A) complying or agreeing to comply with
6 requirements—

7 (i) prohibiting the import of items or
8 services from the boycotted country or
9 items produced or services provided by any
10 business concern organized under the laws
11 of the boycotted country or by nationals or
12 residents of the boycotted country; or

13 (ii) prohibiting the shipment of items
14 to the boycotted country on a carrier of the
15 boycotted country, or by a route other than
16 that prescribed by the boycotting country
17 or the recipient of the shipment;

18 (B) complying or agreeing to comply with
19 import and shipping document requirements
20 with respect to the country of origin, the name
21 of the carrier and route of shipment, the name
22 of the supplier of the shipment or the name of
23 the provider of other services, except that no in-
24 formation knowingly furnished or conveyed in
25 response to such requirements may be stated in

1 negative, blacklisting, or similar exclusionary
2 terms, other than with respect to carriers or
3 route of shipment as may be permitted by such
4 regulations in order to comply with precaution-
5 ary requirements protecting against war risks
6 and confiscation;

7 (C) complying or agreeing to comply in the
8 normal course of business with the unilateral
9 and specific selection by a boycotting country,
10 or national or resident thereof, of carriers, in-
11 surers, suppliers of services to be performed
12 within the boycotting country or specific items
13 which, in the normal course of business, are
14 identifiable by source when imported into the
15 boycotting country;

16 (D) complying or agreeing to comply with
17 export requirements of the boycotting country
18 relating to shipments or transshipment of ex-
19 ports to the boycotted country, to any business
20 concern of, or organized under the laws of, the
21 boycotted country, or to any national or resi-
22 dent of the boycotted country;

23 (E) compliance by an individual or agree-
24 ment by an individual to comply with the immi-
25 gration or passport requirements of any country

1 with respect to such individual or any member
2 of such individual's family or with requests for
3 information regarding requirements of employ-
4 ment of such individual within the boycotting
5 country; and

6 (F) compliance by a United States person
7 resident in a foreign country or agreement by
8 such person to comply with the laws of the
9 country with respect to his or her activities ex-
10 clusively therein.

11 (3) EXCEPTION FOR COMPLIANCE WITH FOR-
12 EIGN LAWS.—Regulations issued pursuant to para-
13 graph (2)(F) may contain exceptions for a United
14 States person resident in a foreign country comply-
15 ing with the laws or regulations of the foreign coun-
16 try governing imports into such country of
17 trademarked, trade named, or similarly specifically
18 identifiable products, or components of products for
19 the use of such person, including the performance of
20 contractual services within that country, as may be
21 defined by such regulations.

22 (4) LIMITATION.—Regulations issued pursuant
23 to subparagraphs (C) and (F) of paragraph (2) shall
24 not provide exceptions from subparagraphs (B) and
25 (C) of paragraph (1).

1 (5) NO EFFECT ON ANTITRUST OR CIVIL
2 RIGHTS LAWS.—Nothing in this subsection may be
3 construed to supersede or limit the operation of the
4 antitrust or civil rights laws of the United States.

5 (b) REPORTING OF CERTAIN TRADE PRACTICES.—

6 (1) REPORT TO SECRETARY.—The President
7 shall issue regulations requiring that any United
8 States person receiving a request for the furnishing
9 of information, the entering into or implementing of
10 agreements, or the taking of any other action re-
11 ferred to in paragraphs (9) and (10) of section
12 102(b) shall—

13 (A) report that fact to the Secretary, to-
14 gether with such other information concerning
15 the request as the Secretary may require in
16 order to take appropriate action to carry out
17 the policies set forth in those paragraphs; and

18 (B) report to the Secretary whether such
19 person intends to comply and whether such per-
20 son has complied with the request.

21 (2) PUBLIC INSPECTION.—Any report filed pur-
22 suant to paragraph (1) shall be made available
23 promptly for public inspection and copying, except
24 that information regarding the quantity, description,
25 and value of any items to which such report relates

1 may be kept confidential if the Secretary determines
2 that disclosure thereof would place the United States
3 person involved at a competitive disadvantage.

4 (3) TRANSMITTAL TO SECRETARY OF STATE.—

5 The Secretary shall periodically transmit summaries
6 of the information contained in reports made to the
7 Secretary of State under paragraph (1) as the Sec-
8 retary of State, in consultation with the Secretary,
9 considers appropriate for carrying out the policies
10 stated in paragraphs (9) and (10) of section 102(b).

11 (c) PREEMPTION.—This section and the regulations
12 issued pursuant to this section shall preempt any law, rule,
13 or regulation of any of the several States, or the District
14 of Columbia, or any of the territories or possessions of
15 the United States, or of any governmental subdivision
16 thereof, which pertains to participation in, compliance
17 with, implementation of, or the furnishing of information
18 regarding restrictive trade practices, or boycotts fostered
19 or imposed by foreign countries against other countries.

20 (d) GENERAL APPLICATION.—This section shall
21 apply to any transaction or activity undertaken by or
22 through a United States person or any other person with
23 intent to evade the provisions of this section and regula-
24 tions issued pursuant to this section. Regulations issued
25 pursuant to this section shall expressly provide that the

1 exceptions set forth in subsection (a)(2) do not permit ac-
2 tivities or agreements (expressed or implied by a course
3 of conduct, including a pattern of responses) that are oth-
4 erwise prohibited and which are not within the intent of
5 such exceptions.

6 **SEC. 108. PROCEDURES FOR PROCESSING EXPORT LI-**
7 **CENSE APPLICATIONS; OTHER INQUIRIES.**

8 (a) PRIMARY RESPONSIBILITY OF THE SEC-
9 RETARY.—

10 (1) DETERMINATION BY SECRETARY.—All ex-
11 port license applications required under this title
12 shall be submitted by the applicant to the Secretary.
13 All determinations on any such applications shall be
14 made by the Secretary, subject to the procedures
15 provided in this section.

16 (2) REVIEW BY OTHER DEPARTMENTS AND
17 AGENCIES.—The Departments of State, Defense,
18 and Energy, and the Arms Control and Disar-
19 mament Agency are authorized to review any export
20 license application required under this title. Such de-
21 partments and agency shall notify the Department
22 as to what types of applications they are to review,
23 and the Department shall refer all such applications
24 to the department or agency providing such notice.
25 The department and agency shall fully participate in

1 the interagency review and escalation process. As
2 part of any review, the department or agency shall—

3 (A) consult with the interagency groups es-
4 tablished to provide expertise and coordinate
5 interagency review and consultation;

6 (B) complete the review within the period
7 of time established by this title; and

8 (C) make recommendations to the Sec-
9 retary.

10 (3) REGULATIONS.—In promulgating regula-
11 tions to implement this section, the Secretary shall
12 describe—

13 (A) the procedures required by this sec-
14 tion;

15 (B) the responsibilities of the Secretary
16 and of other departments and agencies in re-
17 viewing applications;

18 (C) the rights of the applicant; and

19 (D) the extent of any multilateral review of
20 a given license application.

21 (4) COMPUTATION OF TIME.—In calculating the
22 processing times set forth in this section, the Sec-
23 retary shall use calendar days, provided that if the
24 final day for a required action falls on a weekend or

1 holiday, that action shall be taken not later than the
2 following business day.

3 (5) FACTORS TO BE CONSIDERED.—In review-
4 ing applications for validated export licenses, the
5 Secretary shall consider the reliability of the parties
6 to the proposed export. In making such evaluation,
7 the Secretary may consider all sources of informa-
8 tion, including intelligence information. However, the
9 consideration of intelligence information in connec-
10 tion with the evaluation of the reliability of parties
11 shall not authorize the direct or indirect disclosure
12 of classified information or sources and methods of
13 gathering classified information.

14 (b) COMMITTEE ON EXPORT CONTROL POLICY.—

15 (1) ESTABLISHMENT.—There is established an
16 advisory committee to be known as the Committee
17 on Export Control Policy (hereafter in this section
18 referred to as the “Committee”).

19 (2) MEMBERSHIP.—The Committee shall con-
20 sist of—

21 (A) the Under Secretary for Export Ad-
22 ministration of the Department who shall chair
23 the Committee; and

24 (B) appropriate representatives from—

25 (i) the Department of State;

- 1 (ii) the Department of Defense;
- 2 (iii) the Department of Energy; and
- 3 (iv) the Arms Control and Disar-
- 4 mament Agency.

5 (3) CONSULTATION.—The Committee may con-

6 sult with representatives of—

7 (A) the Chairman of the Joint Chiefs of

8 Staff;

9 (B) the Director of Central Intelligence;

10 and

11 (C) other Government departments and

12 agencies designated at the discretion of the

13 President.

14 (4) DUTIES.—The Committee shall formulate

15 export control policy and shall provide detailed guid-

16 ance concerning implementation of such policy to li-

17 censing officials in the departments and agencies re-

18 sponsible for the administration of export control

19 policy.

20 (c) INITIAL SCREENING.—

21 (1) RECEIPT AND STATUS INFORMATION.—

22 Upon receipt of any export license application, the

23 Secretary shall include receipt and status informa-

24 tion regarding the application in the records of the

25 Department.

1 (2) ACTION ON APPLICATIONS.—Not later than
2 7 days after receipt of any export license application,
3 the Secretary shall—

4 (A) contact the applicant if the application
5 is improperly completed or if additional infor-
6 mation is required, and hold the application for
7 not more than 20 days while the applicant pro-
8 vides the necessary corrections or information
9 (and such 20-day time period shall not be
10 counted in calculating the time periods pre-
11 scribed in this section), and if the applicant
12 does not provide the required information dur-
13 ing that 20-day period, return the application
14 without action;

15 (B) refer the application and all necessary
16 recommendations and analyses by the Secretary
17 to all other agencies, when such referral is re-
18 quested, and forward to the agencies any rel-
19 evant information submitted by the applicant,
20 including information that could not be reduced
21 to electronic form; or

22 (C) assure the stated classification on the
23 application is correct, return the application if
24 a validated license is not required, and, if refer-
25 ral to other agencies is not requested, grant the

1 application or notify the applicant of the pro-
2 posed denial of the application.

3 (d) ACTION BY OTHER DEPARTMENTS AND AGEN-
4 CIES.—

5 (1) ACTION ON REFERRAL.—Not later than 5
6 days after receipt of a referral of an export license
7 application, an agency or department shall specify to
8 the Secretary any information that is not in the ap-
9 plication that it requires to make a determination,
10 and the Secretary shall promptly request such infor-
11 mation from the applicant. The time that may elapse
12 between the date the information is requested from
13 the applicant and the date the information is re-
14 ceived by the Secretary shall not be counted in cal-
15 culating the time periods prescribed in this section.

16 (2) RECOMMENDATION TO SECRETARY.—Not
17 later than 21 days after receipt of a referral and any
18 necessary information regarding such referral, the
19 agency or department shall provide the Secretary
20 with a recommendation either to approve or deny
21 the license. As appropriate, such recommendation
22 shall reflect consultation and discussions in inter-
23 agency groups established to provide expertise and
24 coordinate interagency consultation. A recommenda-
25 tion that the Secretary deny a validated license shall

1 include a statement of reasons for the recommended
2 denial that are consistent with the purposes of this
3 title, and shall cite both the statutory and regulatory
4 basis for such recommendation. A department or
5 agency that fails to provide a recommendation with-
6 in 21 days with a statement of reasons and the stat-
7 utory and regulatory basis shall be deemed to have
8 no objection to the decision of the Secretary.

9 (3) REVIEW BY INTERAGENCY COMMITTEE.—

10 (A) IN GENERAL.—The Secretary shall es-
11 tablish an interagency committee to conduct an
12 initial review of any license applications on
13 which the reviewing agencies are not in agree-
14 ment.

15 (B) SELECTION AND DUTIES OF CHAIR-
16 PERSON.—The Secretary shall select a chair-
17 person of the interagency committee. The chair-
18 person shall consider the recommendations of
19 the reviewing agencies and inform them of the
20 decision of the chairperson on the license appli-
21 cation.

22 (C) APPEAL.—Any appeal from the deci-
23 sion of the chairperson shall be submitted in
24 writing by an official of the department or
25 agency appealing the decision who is appointed

1 by the President, by and with the advice and
2 consent of the Senate, or by an officer properly
3 acting in such capacity consistent with proce-
4 dures established by the President in accord-
5 ance with subsection (e).

6 (4) DETERMINATION BY SECRETARY.—Upon
7 receiving all comments from other departments and
8 agencies regarding an application upon which there
9 is no disagreement, or 35 days following receipt of
10 a license application upon which there has been dis-
11 agreement, whichever is earlier, the Secretary
12 shall—

13 (A) approve the application and issue the
14 license;

15 (B) notify the applicant of the proposed
16 denial of the license application; or

17 (C) notify the applicant that the applica-
18 tion is disputed by reviewing agencies and has
19 been referred for resolution pursuant to proce-
20 dures established by the President under sub-
21 section (e).

22 (e) INTERAGENCY RESOLUTION.—The President
23 shall establish an interagency committee process for the
24 review and determination of export license applications as

1 to which a reviewing agency has objected pursuant to sub-
2 section (d)(3)(C). Any such process shall—

3 (1) be chaired by the Secretary or the Sec-
4 retary's designee;

5 (2) make determinations based on majority vote
6 of such committee;

7 (3) provide that a department or agency that
8 fails to make a timely appeal shall be deemed to
9 have no objection to the pending decision;

10 (4) provide for appeal by a dissenting agency to
11 the President for final determination; and

12 (5) ensure that license applications are resolved
13 not later than 60 days after the date of receipt of
14 the license application by the Secretary.

15 (f) OTHER ACTIONS BY THE SECRETARY.—

16 (1) DETERMINATION BY SECRETARY.—When
17 no referral to other departments or agencies is re-
18 quired, the Secretary shall issue a license or notify
19 the applicant of the proposed denial of the applica-
20 tion not later than 7 days after receipt of the appli-
21 cation.

22 (2) NOTICE OF DENIAL.—In cases where the
23 Secretary has determined that an application should
24 be denied, the applicant shall be informed in writing
25 of—

1 (A) the determination to deny;

2 (B) the statutory and regulatory basis for
3 the proposed denial;

4 (C) what, if any, modifications in or re-
5 strictions on the items for which the license was
6 sought would allow such export to be compat-
7 ible with export controls imposed under this
8 title, and which officer or employee of the De-
9 partment would be in a position to discuss
10 modifications or restrictions with the applicant;

11 (D) to the extent consistent with the na-
12 tional security and foreign policy of the United
13 States, the specific considerations that led to
14 the determination to deny the application; and

15 (E) the availability of appeal procedures.

16 (3) RESPONSE TIME.—The Secretary shall
17 allow the applicant not more than 20 days to re-
18 spond to the determination to deny an application
19 before the license application is denied.

20 (4) SUSPENSION OF TIME PERIODS.—The Sec-
21 retary and the applicant may, at any time, agree to
22 suspend the time periods prescribed by this section
23 in order to negotiate modifications to the application
24 and, if necessary, obtain agreement to such modi-
25 fications from the foreign parties to the transaction,

1 if the Secretary notifies the Committee on Banking,
2 Housing, and Urban Affairs of the Senate and the
3 Committee on Foreign Affairs of the House of Rep-
4 resentatives of such agreement.

5 (g) MULTILATERAL CONTROLS.—When an applica-
6 tion recommended for approval must be submitted to a
7 multilateral review process, pursuant to a multilateral re-
8 gime, formal or informal, of which the United States is
9 a member or an adherent, the application shall be referred
10 to the multilateral regime not later than 5 days after the
11 decision to approve is made. Any such application shall
12 be considered in accordance with the review procedures es-
13 tablished by the relevant multilateral export control re-
14 gime, and the license shall be issued or a notice of pro-
15 posed denial of the application shall be issued not later
16 than 5 days after receipt of a decision by the multilateral
17 regime.

18 (h) TIME PERIODS.—

19 (1) IN GENERAL.—All license applications shall
20 be resolved not later than 60 days after the date of
21 filing of the license application.

22 (2) EXCEPTIONS.—The following actions relat-
23 ed to processing an application shall not be counted
24 in calculating the time periods prescribed in this sec-
25 tion:

1 (A) PRELICENSE CHECKS.—Prelicense
2 checks through government channels that may
3 be required to establish the identity and reli-
4 ability of the recipient of items controlled under
5 this title, if—

6 (i) the need for such prelicense check
7 is established by the Secretary, or by an-
8 other department or agency if the request
9 for prelicense check is made by such de-
10 partment or agency;

11 (ii) the request for such prelicense
12 check is sent by the Secretary not later
13 than 5 days after receipt of an application
14 for the determination that the prelicense
15 check is required;

16 (iii) the analysis of the response to
17 the request for a prelicense check is com-
18 pleted by the Secretary not later than 5
19 days after receipt of the response; and

20 (iv) the prelicense checks are com-
21 pleted not later than 45 days after receipt
22 of a license application.

23 (B) REQUESTS FOR GOVERNMENT-TO-GOV-
24 ERNMENT ASSURANCES.—When failure to ob-
25 tain government-to-government assurances of

1 suitable end use of items approved for export
2 would result in denial of a license application,
3 a request for such assurances shall be transmit-
4 ted to the Secretary of State not later than 5
5 days after the determination that such assur-
6 ances are required. The Secretary of State shall
7 initiate the request of the relevant government
8 not later than 10 days after receiving the re-
9 quest for assurances. An export license shall be
10 issued not later than 5 days after receipt by the
11 Secretary of the requested assurances.

12 (C) MULTILATERAL REVIEW.—Multilateral
13 review of a license application shall be under-
14 taken as provided for in subsection (g), if such
15 multilateral review is required by the relevant
16 multilateral regime.

17 (D) CONGRESSIONAL NOTIFICATION.—
18 Mandatory congressional notifications under
19 this title shall be undertaken in such time as
20 may be required.

21 (3) OTHER TIME PERIODS.—If prelicense
22 checks and assurances are not requested within the
23 time periods set forth in subparagraph (A) or (B) of
24 paragraph (2), they shall be accomplished within the
25 time periods established by this section.

1 (i) APPEALS.—

2 (1) ESTABLISHMENT OF PROCEDURES.—The
3 Secretary shall establish appropriate procedures for
4 any applicant to appeal to the Secretary by petition
5 the denial of an export license application or other
6 administrative action taken under this title.

7 (2) REQUEST FOR COMPLIANCE WITH TIME PE-
8 RIODS.—In any case in which any action prescribed
9 in this section is not taken on the license application
10 within the time periods established by this section
11 (except in the case of a time period extended under
12 subsection (h)(2)(C), of which the applicant is noti-
13 fied), the applicant may file a petition with the Sec-
14 retary requesting compliance with the requirements
15 of this section. When such petition is filed, the Sec-
16 retary shall take immediate steps to correct the situ-
17 ation giving rise to the petition and shall imme-
18 diately notify the applicant of such steps.

19 (3) ADJUDICATION.—If, not later than 20 days
20 after a petition is filed under paragraph (2), the
21 processing of the application has not been brought
22 into conformity with the requirements of this sec-
23 tion, or the application has been brought into con-
24 formity with such requirements, but the Secretary
25 has not so notified the applicant, the applicant may

1 bring an action in an appropriate United States dis-
2 trict court for an order requiring compliance with
3 the temporal requirements of this section. The Unit-
4 ed States district courts shall have jurisdiction to
5 provide appropriate relief.

6 (j) CLASSIFICATION REQUESTS AND OTHER INQUIR-
7 IES.—

8 (1) CLASSIFICATION.—In any case in which the
9 Secretary receives a written request asking for the
10 proper classification of an item on the Control List,
11 the Secretary shall, not later than 14 days after re-
12 ceipt of the request, inform the person making the
13 request of the proper classification.

14 (2) OTHER INFORMATION.—In any case in
15 which the Secretary receives a written request for in-
16 formation about the applicability of export license
17 requirements under this title to a proposed export
18 transaction or series of transactions, the Secretary
19 shall, not later than 30 days after the receipt of the
20 request, provide such information to the requester.

21 (k) EFFECT ON NUCLEAR NON-PROLIFERATION ACT
22 OF 1978.—The procedures published by the President
23 pursuant to section 309(c) of the Nuclear Non-Prolifera-
24 tion Act of 1978 shall be superseded to the extent that
25 such procedures are inconsistent with this section.

1 (l) STRATEGIC PLAN REQUIRED FOR PRELICENSE
2 CHECKS.—

3 (1) AUTHORITY.—Not later than 90 days after
4 the date of enactment of this Act, and annually
5 thereafter, the Secretary, in consultation with appro-
6 priate departments and agencies, shall develop a
7 strategic plan for prelicense checks. Such a plan
8 shall be consistent with United States national secu-
9 rity, nonproliferation, and foreign policy interests,
10 and shall include overall objectives, priorities, and
11 targeted areas.

12 (2) EXEMPTION FROM DISCLOSURE.—A strate-
13 gic plan developed under paragraph (1) shall not be
14 subject to disclosure under section 552 of title 5,
15 United States Code.

16 (m) ELECTRONIC LICENSING INFORMATION.—Not
17 later than 6 months after the date of enactment of this
18 Act, the Departments of State, Defense, and Energy, the
19 Central Intelligence Agency, and the Arms Control and
20 Disarmament Agency shall develop a means for receiving
21 and analyzing the electronic transmission of licensing in-
22 formation from the Department, which the Secretary shall
23 provide, consistent with the provisions of this section.

24 **SEC. 109. VIOLATIONS.**

25 (a) CRIMINAL PENALTIES.—

1 (1) VIOLATIONS BY AN INDIVIDUAL.—Except as
2 provided in paragraph (3), any individual who know-
3 ingly violates, or conspires or attempts to violate any
4 provision of this title, or any regulation, license, or
5 order issued under this title, shall be fined not more
6 than 10 times the value of the exports involved, or
7 \$500,000 per violation, whichever is greater, or im-
8 prisoned for not more than 10 years, or both.

9 (2) VIOLATION BY A PERSON OTHER THAN AN
10 INDIVIDUAL.—Except as provided in paragraph (3),
11 any person other than an individual who knowingly
12 violates, or conspires or attempts to violate any pro-
13 vision of this title, or any regulation, license or order
14 issued under this title, shall be fined not more than
15 10 times the value of the exports involved, or
16 \$2,000,000 per violation, whichever is greater.

17 (3) ANTIBOYCOTT VIOLATIONS.—

18 (A) VIOLATION BY AN INDIVIDUAL.—Any
19 individual who knowingly violates, or conspires
20 or attempts to violate any provision of section
21 107 concerning foreign boycotts, or any regula-
22 tion, or order issued under section 107, shall be
23 fined not more than 5 times the value of the ex-
24 ports involved, or \$250,000 per violation,

1 whichever is greater, or imprisoned for not
2 more than 10 years, or both.

3 (B) VIOLATION BY A PERSON OTHER THAN
4 AN INDIVIDUAL.—Any person other than an in-
5 dividual who knowingly violates, or conspires or
6 attempts to violate any provision of section 107,
7 or any regulation, or order issued under section
8 107, shall be fined not more than 5 times the
9 value of the exports involved, or \$500,000 per
10 violation, whichever is greater.

11 (b) FORFEITURE OF PROPERTY INTEREST AND PRO-
12 CEEDS.—

13 (1) CONVICTION OTHER THAN FOR AN
14 ANTIBOYCOTT VIOLATION.—Any person who is con-
15 victed under paragraph (1) or (2) of subsection (a),
16 shall, in addition to any other penalty, forfeit to the
17 United States—

18 (A) any of that person's interest in, secu-
19 rity of, claim against, or property or contractual
20 rights of any kind, in the goods or tangible
21 items that were the subject of the violation;

22 (B) any of that person's interest in, secu-
23 rity of, claim against, or property or contractual
24 rights of any kind, in tangible property that

1 was used in the export or attempt to export
2 that was the subject of the violation; and

3 (C) any of that person's property con-
4 stituting, or derived from, any proceeds ob-
5 tained directly or indirectly as a result of the
6 violation.

7 (2) PROCEDURES.—The procedures for any for-
8 feiture under this subsection, and the duties and au-
9 thority of the courts of the United States and the
10 Attorney General with respect to any forfeiture ac-
11 tion under this subsection, or with respect to any
12 property that may be subject to forfeiture under this
13 subsection, shall be governed by the provisions of
14 chapter 46 of title 18, United States Code.

15 (c) CIVIL PENALTIES; ADMINISTRATIVE SANC-
16 TIONS.—

17 (1) IN GENERAL.—The Secretary may impose a
18 civil penalty of not more than \$250,000 for each vio-
19 lation of this title, or any regulation, license, or
20 order issued under this title, either in addition to or
21 in lieu of any other liability or penalty which may
22 be imposed, except that the civil penalty for each
23 violation involving section 107 may not exceed
24 \$50,000.

1 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
2 retary may deny, suspend, or revoke the authority of
3 any person to export or receive any item subject to
4 this title, for any violation of the provisions of this
5 title, or of any regulation, license, or order issued
6 under this title.

7 (d) PROCEDURES RELATING TO CIVIL PENALTIES
8 AND SANCTIONS.—

9 (1) NOTICE AND HEARING.—Any administrative
10 sanction or civil penalty imposed under subsection
11 (c) may be imposed only after notice and oppor-
12 tunity for an agency hearing on the record in ac-
13 cordance with sections 554 through 557 of title 5,
14 United States Code. The imposition of any such ad-
15 ministrative sanction shall be subject to judicial re-
16 view in accordance with sections 701 through 706 of
17 title 5, United States Code.

18 (2) PUBLIC INSPECTION.—Any charging letter
19 or other document initiating administrative proceed-
20 ings for the imposition of sanctions or penalties for
21 violations of regulations issued pursuant to section
22 107(a) shall be made available for public inspection
23 and copying.

24 (3) PENALTY REGULATIONS.—The President
25 may provide, by regulation, standards for establish-

1 ing levels of the civil penalties provided in subsection
2 (c) based on the seriousness of the violation, the cul-
3 pability of the violator, and the violator's record of
4 cooperation with the Government in disclosing the
5 violation.

6 (e) PAYMENT OF CIVIL PENALTIES.—

7 (1) CONDITIONAL.—The payment of any civil
8 penalty imposed pursuant to subsection (c) may be
9 conditioned, for a period of not longer than 1 year,
10 beginning on the date on which the penalty is due,
11 to the granting, restoring, or continuing validity of
12 any export license, permission, or privilege granted
13 or to be granted to the person upon whom such pen-
14 alty is imposed.

15 (2) SUSPENSION OR DEFERRAL.—The payment
16 of any civil penalty imposed under subsection (c)
17 may be deferred or suspended in whole or in part for
18 a period of time not longer than any probation pe-
19 riod that may be imposed upon such person. Such
20 deferral or suspension shall not operate as a bar to
21 the collection of the penalty in the event that the
22 conditions of the suspension, deferral, or probation
23 are not fulfilled.

24 (f) REFUNDS.—Any amount paid in satisfaction of
25 any civil penalty imposed pursuant to subsection (c) shall

1 be received into the Treasury of the United States as a
2 miscellaneous receipt. At the discretion of the head of any
3 department or agency concerned, any civil penalty imposed
4 pursuant to subsection (c) may be refunded, not later than
5 2 years after payment, on the ground of a material error
6 of fact or law in the imposition of the penalty. Notwith-
7 standing section 1346(a) of title 28, United States Code,
8 no action for the refund of any such penalty may be main-
9 tained in any court.

10 (g) COLLECTION.—

11 (1) AUTHORITY.—If any person fails to pay a
12 civil penalty imposed pursuant to subsection (c), the
13 Secretary may ask the Attorney General of the Unit-
14 ed States to bring a civil action in an appropriate
15 district court to recover the amount imposed (plus
16 interest at currently prevailing rates from the date
17 of the final order). In such an action, the validity,
18 amount, and appropriateness of such penalty shall
19 not be subject to review.

20 (2) COMMENCEMENT.—An action described in
21 paragraph (1) shall be commenced not later than 5
22 years after the date on which the order imposing the
23 civil penalty becomes final. Any suspension or defer-
24 ral of the payment of such penalty under subsection

1 (e)(2) shall not be counted in calculating the 5-year
2 period imposed under this subsection.

3 (h) PRIOR CONVICTIONS.—

4 (1) IN GENERAL.—At the discretion of the Sec-
5 retary, export privileges under this title may be de-
6 nied for a period of not more than 10 years, begin-
7 ning on the date of conviction, and any export li-
8 cense in which such person had an interest at the
9 time of conviction may be revoked for conviction of
10 a violation of—

11 (A) this title;

12 (B) the Export Administration Act of
13 1979;

14 (C) the International Emergency Economic
15 Powers Act;

16 (D) sections 793, 794, and 798, of title 18,
17 United States Code;

18 (E) section 4(a) of the Internal Security
19 Act of 1950;

20 (F) section 16 of the Trading with the
21 Enemy Act;

22 (G) section 38 of the Arms Export Control
23 Act;

1 (H) any regulation, license, or order issued
2 under any of the laws described in subpara-
3 graphs (A) through (G); or

4 (I) section 371 or 1001 of title 18, United
5 States Code, if the conviction arises out of an
6 activity subject to 1 or more of the provisions
7 of law listed in subparagraphs (A) through (H).

8 (2) OTHER PERSONS.—The Secretary may ex-
9 ercise the authority under paragraph (1) with re-
10 spect to any person related, through affiliation, own-
11 ership, control, or position of responsibility, to any
12 person convicted of any violation of a provision of
13 law set forth in paragraph (1), upon a showing of
14 such relationship with the convicted person and after
15 providing notice and opportunity for hearing.

16 (i) STATUTE OF LIMITATIONS.—

17 (1) IN GENERAL.—Any case in which a civil
18 penalty or other administrative sanction is sought
19 under subsection (c) shall be instituted not later
20 than 5 years after the date on which the alleged vio-
21 lation for which such penalty or sanction is sought
22 occurred.

23 (2) EXCEPTION.—If a criminal indictment al-
24 leging a violation of this title is returned within the
25 time limits prescribed by law for the institution of

1 such an action, the statute of limitations for bring-
2 ing a proceeding to impose a civil penalty or other
3 administrative sanction under this title shall, upon
4 the return of the criminal indictment, be tolled
5 against all persons named as a defendant, and toll-
6 ing shall continue for a period of not more than 6
7 months beginning on the date on which a conviction
8 is entered or the indictment is dismissed.

9 (j) IMPOSITION OF TEMPORARY DENIAL ORDERS.—

10 (1) IN GENERAL.—In any case in which there
11 is reasonable cause to believe that a person is en-
12 gaged in or is about to engage in any act or practice
13 that constitutes or would constitute a violation of
14 this title, or any regulation, order, or license issued
15 under this title, or in any case in which a criminal
16 indictment has been returned against a person alleg-
17 ing a violation of this title, or any of the laws set
18 forth in subsection (h), the Secretary may, without
19 a hearing, issue an order temporarily denying the
20 United States exporting privileges of that person
21 (hereafter in this subsection referred to as a “tem-
22 porary denial order”). A temporary denial order may
23 be effective for not longer than 180 days, but may
24 be renewed by the Secretary, following notice and an

1 opportunity for a hearing, for additional 180-day
2 periods.

3 (2) APPEAL.—

4 (A) APPEAL TO ADMINISTRATIVE LAW
5 JUDGE.—The person subject to the issuance or
6 renewal of a temporary denial order may appeal
7 the issuance or renewal of the temporary denial
8 order, supported by briefs and other material,
9 to an administrative law judge who shall, not
10 later than 15 business days after the appeal is
11 filed, issue a decision affirming, modifying, or
12 vacating the temporary denial order.

13 (B) AFFIRMATION CRITERIA.—The tem-
14 porary denial order shall be affirmed if it is
15 shown that there is reasonable cause to believe
16 that the person subject to the order is engaged
17 in or is about to engage in any act or practice
18 which constitutes or would constitute a violation
19 of this title, or any regulation, order, or license
20 issued under this title, or if it is shown that a
21 criminal indictment has been returned against
22 the person subject to the order alleging a viola-
23 tion of this title, or any of the laws set forth
24 in subsection (h).

1 (C) APPEAL TO SECRETARY.—The decision
2 of the administrative law judge under subpara-
3 graph (A) shall be final unless, not later than
4 10 business days after the date of the adminis-
5 trative law judge’s decision, an appeal is filed
6 with the Secretary. On appeal, the Secretary
7 shall either affirm, modify, reverse, or vacate
8 the decision of the administrative law judge by
9 written order not later than 10 business days
10 after receiving the appeal. The written order of
11 the Secretary shall be final, and is not subject
12 to judicial review, except as provided in para-
13 graph (3).

14 (D) ADMINISTRATIVE RECORD.—The ma-
15 terials submitted to the administrative law
16 judge and the Secretary under this paragraph
17 shall constitute the administrative record for
18 purposes of review by the court.

19 (3) JUDICIAL REVIEW.—An order of the Sec-
20 retary affirming, in whole or in part, the issuance or
21 renewal of a temporary denial order may, not later
22 than 15 days after the order is issued, be appealed
23 by a person subject to the order of the United States
24 Court of Appeals for the District of Columbia Cir-
25 cuit, which shall have jurisdiction over the appeal.

1 The court may review only those issues necessary to
2 determine whether the issuance of the temporary de-
3 nial order was based on reasonable cause to believe
4 that the person subject to the order was engaged in
5 or was about to engage in any act or practice that
6 constitutes or would constitute a violation of this
7 title, or any regulation, order, or license issued
8 under this title, or that a criminal indictment had
9 been returned against the person subject to the
10 order which alleged a violation of this title or any of
11 the laws set forth in subsection (h). The court shall
12 vacate the Secretary's order if the court finds that
13 the Secretary's order is arbitrary, capricious, an
14 abuse of discretion, or otherwise not in accordance
15 with law.

16 (k) VIOLATIONS DEFINED BY REGULATION.—Noth-
17 ing in this section shall be construed to limit the power
18 of the Secretary to define by regulation violations under
19 this title.

20 (l) OTHER AUTHORITIES.—Nothing in subsection
21 (c), (e), (f), (g), (h), or (i) limits—

22 (1) the availability of other administrative or
23 judicial remedies with respect to violations of this
24 title, or any regulation, order, or license issued
25 under this title;

1 (2) the authority to compromise and settle ad-
2 ministrative proceedings brought with respect to vio-
3 lations of this title, or any regulation, order, or li-
4 cense issued under this title; or

5 (3) the authority to compromise, remit, or miti-
6 gate seizures and forfeitures pursuant to section
7 1(b) of title VI of the Act of June 15, 1917 (67
8 Stat. 577, chapter 434; 22 U.S.C. 401(b)).

9 **SEC. 110. ENFORCEMENT.**

10 (a) GENERAL AUTHORITY AND DESIGNATION.—

11 (1) IN GENERAL.—The Secretary, in consulta-
12 tion with the Secretary of the Treasury, and the
13 heads of other appropriate departments and agen-
14 cies, shall be responsible for providing policy guid-
15 ance on the enforcement of this title.

16 (2) EXERCISE OF AUTHORITY.—To the extent
17 necessary or appropriate to the enforcement of this
18 title, or to the imposition of any penalty, forfeiture,
19 or liability arising under the Export Administration
20 Act of 1979, officers or employees of the Depart-
21 ment designated by the Secretary, and officers and
22 employees of the United States Customs Service
23 (hereafter in this section referred to as the “Cus-
24 toms Service”) designated by the Commissioner of
25 the Customs Service may exercise the enforcement

1 authorities described in paragraphs (3) and (4). In
2 carrying out such enforcement authorities—

3 (A) the Commissioner and officers and em-
4 ployees of the Customs Service designated by
5 the Commissioner—

6 (i) may investigate within or outside
7 of the United States and at those ports of
8 entry or exit from the United States where
9 officers of the Customs Service are author-
10 ized by law to carry out such enforcement
11 responsibilities; and

12 (ii) subject to paragraph (3), may, in
13 the enforcement of this title, search, detain
14 (after search), and seize goods or tech-
15 nology at those ports of entry or exit from
16 the United States where officers of the
17 Customs Service are authorized by law to
18 conduct such searches, detentions, and sei-
19 zures, and at those places outside of the
20 United States where the Customs Service,
21 pursuant to agreements or other arrange-
22 ments with other countries, is authorized
23 to perform enforcement activities;

1 (B) the Secretary, and officers and em-
2 ployees of the Department designated by the
3 Secretary—

4 (i) may investigate within the United
5 States;

6 (ii) shall conduct, outside of the Unit-
7 ed States, pre-license and post-shipment
8 verifications of items licensed for export,
9 and investigations in the enforcement of
10 section 107;

11 (iii) may search, detain (after search),
12 and seize items at those places within the
13 United States other than those ports and
14 borders specified in subparagraph (A); and

15 (iv) may, only with the concurrence of
16 the Commissioner of the Customs Service,
17 or a person designated by the Commis-
18 sioner, search, detain (after search), and
19 seize items at those ports and borders
20 specified in subparagraph (A); and

21 (C) the Secretary and the Commissioner
22 may enter into agreements and arrangements
23 for the enforcement of this title, including for-
24 eign investigations and information exchange.

1 (3) AUTHORITIES.—Any officer or employee
2 designated by the Secretary or the Commissioner
3 under paragraph (2) may—

4 (A) investigate and obtain information;

5 (B) require reports or records, or the keep-
6 ing of reports or records;

7 (C) inspect books, reports, records, other
8 writings, premises, or property of any person;

9 (D) take the sworn testimony of any per-
10 son;

11 (E) administer oaths or affirmations;

12 (F) execute any warrant or other process
13 issued by a court or officer of competent juris-
14 diction with respect to the enforcement of this
15 title;

16 (G) require, by subpoena, any person to
17 appear and testify, or to appear and produce
18 books, records, and other writings, or both;

19 (H) in the case of contumacy by, or refusal
20 to obey a subpoena issued to any such person,
21 petition a district court of the United States to
22 exercise jurisdiction to issue, after notice and
23 hearing, an order requiring such person to ap-
24 pear and testify or to appear and produce
25 books, records, and other writings, or both, and

1 any failure to obey such order of the court may
2 be punished by such court as a contempt there-
3 of;

4 (I) arrest any person without warrant for
5 any violation of this title committed in the pres-
6 ence or view of the officer or employee, or if the
7 officer or employee has probable cause to be-
8 lieve that the person to be arrested has commit-
9 ted or is committing such a violation;

10 (J) carry firearms; and

11 (K) detain (after search) or seize, for pur-
12 poses of securing for trial or forfeiture to the
13 United States, any item in or on any vehicle,
14 vessel, aircraft, or person, or in a package or
15 container on a vehicle, vessel, aircraft, or per-
16 son, if the officer or employee has probable
17 cause to believe the item has been, is being, or
18 is about to be exported from or transited
19 through the United States in violation of this
20 title.

21 (4) CUSTOMS SERVICE AUTHORITY.—In addi-
22 tion to the authorities in paragraph (3), officers and
23 employees of the Customs Service designated by the
24 Commissioner may—

1 (A) stop, search, and examine a vehicle,
2 vessel, aircraft, or person on which or on whom
3 the officer or employee has reasonable cause to
4 suspect there is any item that has been, is
5 being, or is about to be exported from or
6 transited through the United States in violation
7 of this title; and

8 (B) detain and search any package or con-
9 tainer in which the officer or employee has rea-
10 sonable cause to suspect there is any item that
11 has been, is being, or is about to be exported
12 from or transited through the United States in
13 violation of this title.

14 (5) ADDITIONAL AUTHORITY.—The authorities
15 conferred by this subsection are in addition to any
16 authorities conferred under other laws.

17 (b) FORFEITURE.—

18 (1) IN GENERAL.—All goods or tangible items
19 lawfully seized under subsection (a) by designated
20 officers or employees shall be forfeited to the United
21 States. Those provisions of law relating to—

22 (A) the seizure, summary and judicial for-
23 feiture, and condemnation of property for viola-
24 tions of the customs laws;

1 (B) the disposition of such property or the
2 proceeds from the sale thereof;

3 (C) the remission or mitigation of such for-
4 feitures; and

5 (D) the compromise of claims;
6 shall apply to seizures and forfeitures incurred, or
7 alleged to have been incurred, under the provisions
8 of this subsection, to the extent that they are appli-
9 cable and not inconsistent with this title.

10 (2) PERFORMANCE OF DUTIES.—Such duties as
11 are imposed upon the customs officers, employees, or
12 any other person with respect to the seizure and for-
13 feiture of property under the customs laws may be
14 performed with respect to seizures and forfeitures of
15 property under this subsection by the Secretary or
16 such officers or employees of the Department as are
17 authorized or designated by the Secretary for that
18 purpose, or, upon the request of the Secretary, by
19 any other agency that has authority to manage and
20 dispose of seized property.

21 (c) UNDERCOVER INVESTIGATIVE OPERATIONS.—

22 (1) GENERAL AUTHORITY.—With respect to
23 any undercover investigative operation conducted by
24 the Office of Export Enforcement of the Department
25 (hereafter in this subsection referred to as “OEE”)

1 necessary for the detection and prosecution of viola-
2 tions of this title—

3 (A) funds made available for export en-
4 forcement under this title may—

5 (i) be used to purchase property,
6 buildings, and other facilities, and to lease
7 space within the United States, without re-
8 gard to—

9 (I) sections 1341 and 3324 of
10 title 31, United States Code;

11 (II) the third undesignated para-
12 graph under the heading “MIS-
13 CELLANEOUS” of the Act of March 3,
14 1877 (19 Stat. 370, chapter 106; 40
15 U.S.C. 34);

16 (III) sections 3732(a) and 3741
17 of the Revised Statutes (41 U.S.C.
18 11(a), 22); or

19 (IV) sections 304 and 305 of the
20 Federal Property and Administrative
21 Services Act of 1949 (41 U.S.C. 254,
22 255);

23 (ii) be used to establish or to acquire
24 proprietary corporations or business enti-
25 ties as part of an OEE undercover oper-

1 ation, and to operate such corporations or
2 business entities on a commercial basis,
3 without regard to section 9102 of title 31,
4 United States Code; and

5 (iii) be deposited in banks or other fi-
6 nancial institutions without regard to sec-
7 tion 648 of title 18, United States Code,
8 and section 3302 of title 31, United States
9 Code; and

10 (B) the proceeds from OEE undercover op-
11 erations may—

12 (i) be deposited in banks or other fi-
13 nancial institutions without regard to sec-
14 tion 648 of title 18, United States Code,
15 and section 3302 of title 31, United States
16 Code; and

17 (ii) be used to offset necessary and
18 reasonable expenses incurred in such oper-
19 ations, without regard to section 3302 of
20 title 31, United States Code, if the Direc-
21 tor of OEE certifies, in writing, that any
22 action authorized by this paragraph is nec-
23 essary for the conduct of the undercover
24 operation.

1 (2) PROCEEDS OF UNDERCOVER ENTITIES.—If
2 a corporation or business entity that is established
3 or acquired as part of an OEE undercover operation
4 and that has a net value of more than \$50,000 is
5 to be liquidated, sold, or otherwise disposed of, OEE
6 shall report the circumstances to the Secretary and
7 the Comptroller General of the United States, as far
8 in advance of such disposition as the Director of
9 OEE determines is practicable. The proceeds of the
10 liquidation, sale, or other disposition, after obliga-
11 tions incurred by the corporation or business enter-
12 prise are met, shall be deposited into the Treasury
13 of the United States as miscellaneous receipts.

14 (3) REMAINING PROCEEDS.—As soon as the
15 proceeds from an undercover investigative operation
16 are no longer necessary for the conduct of such op-
17 eration, such proceeds, or the balance of such pro-
18 ceeds remaining at that time, shall be deposited into
19 the Treasury of the United States as miscellaneous
20 receipts.

21 (4) AUDIT AND REPORT OF UNDERCOVER OP-
22 ERATIONS.—

23 (A) FINANCIAL AUDITS.—The Director of
24 OEE shall conduct a detailed financial audit of
25 each undercover investigative operation that is

1 closed and shall submit the results of the audit
2 in writing to the Secretary.

3 (B) REPORT.—Not later than 180 days
4 after an OEE undercover operation is closed,
5 the Secretary shall submit to the Congress a re-
6 port on the results of the audit under subpara-
7 graph (A).

8 (C) CONTENTS OF REPORT.—The report
9 required under subparagraph (B) may be in-
10 cluded in the annual report required under sec-
11 tion 114, and shall include—

12 (i) the number of OEE undercover in-
13 vestigative operations pending as of the
14 end of the 1-year period for which such re-
15 port is submitted;

16 (ii) the number of OEE undercover
17 investigative operations commenced in the
18 1-year period preceding the period for
19 which such report is submitted; and

20 (iii) the number of OEE undercover
21 investigative operations closed in the 1-
22 year period preceding the period for which
23 such report is submitted and, with respect
24 to each such closed undercover operation,

1 the results obtained and any civil claims
2 made with respect thereto.

3 (5) DEFINITIONS.—

4 (A) IN GENERAL.—For purposes of para-
5 graph (4)—

6 (i) an OEE undercover operation shall
7 be deemed to be “closed” at the earliest
8 point in time at which all criminal proceed-
9 ings (other than appeals) are concluded, or
10 covert activities are concluded, whichever
11 occurs later;

12 (ii) the term “employees” means em-
13 ployees, as defined in section 2105 of title
14 5, United States Code, of the Department;
15 and

16 (iii) the terms “undercover investiga-
17 tive operation” and “undercover oper-
18 ation” mean any undercover investigative
19 operation conducted by OEE—

20 (I) in which the gross receipts
21 (excluding interest earned) exceed
22 \$25,000, or expenditures (other than
23 expenditures for salaries of employees)
24 exceed \$75,000; and

1 (II) that is exempt from section
2 3302 or 9102 of title 31, United
3 States Code.

4 (B) EXCEPTION.—Clause (iii) of subpara-
5 graph (A) shall not apply with respect to the in-
6 formation required in the report to the Con-
7 gress under paragraph (4)(C).

8 (d) REFERENCE TO ENFORCEMENT.—For purposes
9 of this section, a reference to the enforcement of this title
10 or to a violation of this title includes enforcement of or
11 a violation of any regulation, license, or order issued under
12 this title.

13 **SEC. 111. AUTHORITY AND PROCEDURES.**

14 (a) UNDER SECRETARY OF COMMERCE.—The Presi-
15 dent shall appoint, by and with the advice and consent
16 of the Senate, an Under Secretary of Commerce for Ex-
17 port Administration who shall carry out all functions of
18 the Secretary under this title, under other statutes that
19 relate to national security, and under such other statutes
20 as the Secretary may delegate. The President shall ap-
21 point, by and with the advice and consent of the Senate,
22 two Assistant Secretaries of Commerce to assist the Under
23 Secretary in carrying out such functions.

24 (b) REGULATIONS.—

1 (1) IN GENERAL.—The Secretary may promul-
2 gate such regulations as are necessary to carry out
3 this title, and amend or revise them as necessary.
4 Such regulations may apply to financing, transport-
5 ing, or other servicing of exports subject to this title.

6 (2) REVIEW OF CERTAIN REGULATIONS.—Reg-
7 ulations to carry out section 105 may only be pro-
8 mulgated after the regulations are submitted for re-
9 view to such departments or agencies as the Presi-
10 dent considers appropriate. The requirement for
11 prior agency review does not confer the right of con-
12 currence or approval by any official, department, or
13 agency to which such regulations are submitted.

14 (c) PUBLIC PARTICIPATION.—

15 (1) IN GENERAL.—To the extent practicable, all
16 regulations imposing controls on exports under this
17 title shall be issued in proposed form, with oppor-
18 tunity for public comment, before taking effect.

19 (2) REISSUANCE BASED ON PUBLIC COM-
20 MENTS.—When a regulation imposing controls under
21 this title is issued with immediate effect, opportunity
22 for public comment shall be provided and that regu-
23 lation shall be reissued in final form after public
24 comments have been fully considered.

25 (d) CONFIDENTIALITY OF INFORMATION.—

1 (1) EXEMPTIONS FROM DISCLOSURE.—

2 (A) INFORMATION OBTAINED BEFORE
3 JUNE 30, 1980.—Except as otherwise provided
4 in sections 107(b)(3) and 109(d)(2), informa-
5 tion obtained under the Export Administration
6 Act of 1979 and its predecessor statutes on or
7 before June 30, 1980, which is deemed con-
8 fidential, including Shipper's Export Declara-
9 tions, or which has been requested by the per-
10 son furnishing such information to be treated
11 confidentially, shall not be subject to disclosure
12 under section 552 of title 5, United States
13 Code, and such information shall not be pub-
14 lished or disclosed unless the Secretary deter-
15 mines that the withholding thereof is contrary
16 to the national interest.

17 (B) INFORMATION OBTAINED AFTER JUNE
18 30, 1980.—Except as otherwise provided in sec-
19 tions 107(b)(3) and 109(d)(2), and subpara-
20 graph (C), information obtained under this
21 title, the Export Administration Act of 1979
22 after June 30, 1980, or the Export Administra-
23 tion Regulations issued under the International
24 Emergency Economic Powers Act, may be with-
25 held only to the extent permitted by law.

1 (C) OTHER INFORMATION.—Information
2 submitted, obtained or considered in connection
3 with an application for an export license or
4 other export authorization, including the export
5 license or other export authorization itself, clas-
6 sification requests, information obtained during
7 the course of a foreign availability assessment,
8 information or evidence obtained in the course
9 of any investigation, and information obtained
10 or furnished in connection with multilateral
11 agreements, treaties, or obligations under this
12 title, the Export Administration Act of 1979
13 after June 30, 1980, or the Export Administra-
14 tion Regulations issued under the International
15 Emergency Economic Powers Act, shall not be
16 subject to disclosure under section 552 of title
17 5, United States Code, and such information
18 shall not be published or disclosed unless the
19 Secretary determines that the withholding
20 thereof is contrary to the national interest.

21 (2) INFORMATION TO CONGRESS AND GAO.—

22 (A) IN GENERAL.—Nothing in this title
23 shall be construed as authorizing the withhold-
24 ing of information from the Congress or the
25 General Accounting Office.

1 (B) AVAILABILITY TO THE CONGRESS.—

2 (i) IN GENERAL.—All information ob-
3 tained at any time under this title or pred-
4 ecessor Acts regarding the control of ex-
5 ports, including any report or license appli-
6 cation required under this title, shall be
7 made available upon request to the Com-
8 mittee on Foreign Affairs and the Sub-
9 committee on International Economic Pol-
10 icy and Trade of the House of Representa-
11 tives, and to the Committee on Banking,
12 Housing, and Urban Affairs and the Sub-
13 committee on International Finance and
14 Monetary Policy of the Senate. Each such
15 committee or subcommittee may provide to
16 other Members of Congress information
17 obtained under this clause, but such infor-
18 mation may not be further disclosed except
19 upon a finding made under clause (ii).

20 (ii) PROHIBITION ON FURTHER DIS-
21 CLOSURE.—No committee or subcommittee
22 described in clause (i), or member thereof,
23 and no other committee, subcommittee, or
24 Member of Congress, shall disclose any in-
25 formation obtained under this title, or

1 predecessor Acts regarding the control of
2 exports that is submitted pursuant to this
3 subsection unless 1 of the full committees
4 described in clause (i) determines that the
5 withholding of that information is contrary
6 to the national interest.

7 (C) AVAILABILITY TO THE GAO.—

8 (i) IN GENERAL.—Information re-
9 ferred to in subparagraph (B) shall, con-
10 sistent with the protection of intelligence,
11 counterintelligence, and law enforcement
12 sources, methods, and activities, as deter-
13 mined by the agency that originally ob-
14 tained the information, and consistent with
15 the provisions of section 716 of title 31,
16 United States Code, be made available only
17 by the agency, upon request, to the Comp-
18 troller General of the United States or to
19 any officer or employee of the General Ac-
20 counting Office authorized by the Comp-
21 troller General of the United States to
22 have access to such information.

23 (ii) PROHIBITION ON FURTHER DIS-
24 CLOSURES.—No officer or employee of the
25 General Accounting Office shall disclose,

1 except to the Congress in accordance with
2 this paragraph, any information made
3 available under clause (i) that is submitted
4 on a confidential basis and from which any
5 individual can be identified.

6 (3) COMMERCE-CUSTOMS INFORMATION EX-
7 CHANGE.—The Secretary and the Commissioner of
8 the United States Customs Service shall exchange
9 any licensing and enforcement information that is
10 necessary to facilitate enforcement efforts and effec-
11 tive license decisions.

12 (4) INFORMATION EXCHANGE BETWEEN COM-
13 MERCE AND OTHER AGENCIES.—The Secretary and
14 the head of any other Government department or
15 agency shall exchange any licensing information de-
16 scribed in subsection (d)(1)(C) that such department
17 or agency requests to facilitate effective licensing de-
18 cisions and analysis.

19 (5) PENALTIES FOR DISCLOSURE OF CON-
20 FIDENTIAL INFORMATION.—Any officer or employee
21 of the United States, or any department or agency
22 thereof, who publishes, divulges, discloses, or makes
23 known in any manner to any extent not authorized
24 by law, any information obtained in the course of
25 such officer's or employee's employment or official

1 duties, or by reason of any examination or investiga-
2 tion, report, record, or filing, of such department,
3 agency, or officer or employee thereof, which infor-
4 mation may not be disclosed under this subsection—

5 (A) shall be fined not more than \$10,000,
6 or imprisoned not more than 1 year, or both;

7 (B) may be removed from office or employ-
8 ment (in the case of an officer or employee);
9 and

10 (C) shall be subject to an administrative
11 fine of not more than \$10,000, in accordance
12 with section 109.

13 (e) AUTHORITY FOR SEMINAR AND PUBLICATIONS
14 FUND.—The Secretary may—

15 (1) cooperate with public agencies, other gov-
16 ernments, international organizations, private indi-
17 viduals, private associations, and other groups in
18 connection with seminars, publications, and related
19 activities to carry out export activities, including
20 educating the public or government officials on the
21 application of this title and the regulations issued
22 under this title; and

23 (2) accept contributions of funds, property, or
24 services in connection with such activities to recover
25 the cost of such activities, and may retain such con-

1 tributions for use in supporting all outreach func-
2 tions of the Department in connection with this title,
3 and with other export control programs of the
4 United States and other countries.

5 (f) APPLICABILITY OF ADMINISTRATIVE PROCE-
6 DURES ACT.—

7 (1) EXEMPTION.—Except as provided in section
8 109(d), the functions exercised under this title are
9 not subject to sections 551, 553 through 559, and
10 701 through 706 of title 5, United States Code.

11 (2) JUDICIAL REVIEW.—Except as provided by
12 subsections (d), (g), and (j) of section 109, a final
13 agency action under this title may be reviewed by
14 appeal to the United States Court of Appeals for the
15 District of Columbia Circuit. The court's review in
16 any such appeal shall be limited to determining
17 whether—

18 (A) a regulation—

19 (i) fails to take an action compelled by
20 this title;

21 (ii) takes an action prohibited by this
22 title; or

23 (iii) otherwise violates this title;

24 (B) an agency action violates this title;

1 (C) an agency action violates an agency
2 regulation establishing time requirements or
3 other procedural requirements of a non-
4 discretionary nature;

5 (D) the issuance of regulations compelled
6 by this title complies with time restrictions im-
7 posed by this title;

8 (E) license decisions are made and appeals
9 thereof are concluded in compliance with time
10 restrictions imposed by this title;

11 (F) classifications and advisory opinions
12 are issued in compliance with time restrictions
13 imposed by this title;

14 (G) unfair impact determinations are in
15 compliance with time restrictions imposed by
16 this title; or

17 (H) the United States has complied with
18 the requirements of section 105(e) after an un-
19 fair impact determination has been rendered.

20 (g) INCORPORATED COMMODITIES, TECHNOLOGY,
21 AND SOFTWARE.—

22 (1) COMMODITIES CONTAINING CONTROLLED
23 PARTS AND COMPONENTS.—Export licenses may not
24 be required under this title or any other provision of
25 law for a commodity solely because the commodity

1 contains parts or components subject to export con-
2 trols under this title if such parts or components—

3 (A) are essential to the functioning of the
4 good;

5 (B) are customarily included in sales of the
6 item to countries other than target countries;
7 and

8 (C) comprise not more than 25 percent of
9 the total value of the good, unless the good it-
10 self, if exported, would by virtue of the func-
11 tional characteristics of the good as a whole
12 make a significant contribution to the military
13 or proliferation potential of a target country or
14 end user that would prove detrimental to the
15 national security of the United States.

16 (2) REEXPORTS OF FOREIGN-MADE ITEMS IN-
17 CORPORATING UNITED STATES ITEMS.—Except as
18 provided in paragraph (3), and except for countries
19 named as terrorist-supporting countries under sec-
20 tion 105(d)(3), no authority or permission may be
21 required—

22 (A) to reexport a foreign-made commodity
23 incorporating United States origin commodities
24 valued at not more than 25 percent of the total
25 value of the foreign-made commodity;

1 (B) to reexport foreign-made software in-
2 corporating United States origin software val-
3 ued at not more than 25 percent of the total
4 value of the foreign-made software; or

5 (C) to reexport foreign technology commin-
6 gled with or drawn from United States origin
7 technology valued at not more than 25 percent
8 of the total value of the foreign technology.

9 (3) REEXPORTS TO OTHER COUNTRIES.—For
10 countries that are subject to an embargo imposed
11 under this title, the International Emergency Eco-
12 nomic Powers Act, or the Trading with the Enemy
13 Act, and for countries named as terrorist-supporting
14 countries under section 105(d)(3), no authority or
15 permission may be required—

16 (A) to reexport a foreign-made commodity
17 incorporating United States origin commodities
18 valued at not more than 10 percent of the total
19 value of the foreign-made commodity;

20 (B) to reexport foreign-made software in-
21 corporating United States origin software val-
22 ued at not more than 10 percent of the total
23 value of the foreign-made software; or

24 (C) to reexport foreign technology commin-
25 gled with or drawn from United States origin

1 technology valued at not more than 10 percent
2 of the total value of the foreign technology.

3 (4) INCORPORATION STANDARD.—For purposes
4 of this subsection, technology and source code used
5 to design or produce foreign-made commodities or
6 software shall not be considered to be incorporated
7 into such foreign-made commodities or software.
8 Notwithstanding the preceding sentence, the Sec-
9 retary may require firms to report their proposed
10 calculations and underlying data sufficient for the
11 Department to evaluate the adequacy of those cal-
12 culations and data related to commodities, tech-
13 nology, and software before a reexporter may rely
14 upon the exceptions from export controls under this
15 subsection.

16 (h) SANCTITY OF EXISTING CONTRACTS AND LI-
17 CENSES.—

18 (1) IN GENERAL.—As part of a unilateral ex-
19 port control imposed under section 105, the Presi-
20 dent may not prohibit the export or reexport of
21 items—

22 (A) in performance of a contract, agree-
23 ment, or other contractual commitment entered
24 into before the effective date of any export con-
25 trols mandated by this title, or before the date

1 on which the President reports to the Congress
2 the President's intention to impose controls on
3 the export or reexport of such items; or

4 (B) under a validated license issued under
5 this title before the effective date of any export
6 controls mandated by this title, or before the
7 date on which the President reports to the Con-
8 gress the President's intention to impose con-
9 trols on the export or reexport of such items.

10 (2) EXCEPTION.—The prohibition in paragraph
11 (1) shall not apply if the President determines and
12 certifies to the Congress that—

13 (A) a breach of the peace poses a serious
14 and direct threat to the strategic interest of the
15 United States;

16 (B) the prohibition or curtailment of each
17 such contract, agreement, commitment, license,
18 or authorization to be controlled will be directly
19 instrumental in remedying the situation posing
20 the direct threat; and

21 (C) the emergency controls will continue
22 only for so long as the direct threat persists.

23 (3) NO DELEGATION.—The determination au-
24 thority provided to the President in paragraph (2)
25 may not be delegated.

1 (i) TRANSPARENCY AND ACCOUNTABILITY IN LI-
2 CENSING.—

3 (1) INFORMATION TO BE PROVIDED.—The Sec-
4 retary and the Secretary of Defense shall semiannu-
5 ally compile and make available to any committee or
6 subcommittee of Congress of appropriate jurisdic-
7 tion, a record showing the disposition of each appli-
8 cation received for an individual validated license to
9 export a dual use commodity. Each such record shall
10 contain—

11 (A) a case number;

12 (B) the date on which the application was
13 received;

14 (C) the name of the applicant;

15 (D) the name of the consignee;

16 (E) the date on which the application was
17 finally approved or denied;

18 (F) a description of the final action taken
19 on the application;

20 (G) the value of the commodity that is the
21 subject of the application;

22 (H) the license type applied for;

23 (I) the end use of the commodity that is
24 the subject of the application;

1 (J) the relevant commodity information;
2 and

3 (K) a record of all interagency positions.

4 (2) TIMING.—The Secretary and the Secretary
5 of Defense shall begin to compile records as required
6 under paragraph (1) on the first business day of the
7 January following the date of enactment of this Act.

8 (3) CERTIFICATION OF APPROVED LICENSES.—
9 The Secretary and the Secretary of Defense shall
10 semiannually certify to the Congress that no license
11 to export a dual use commodity approved during the
12 preceding 6-month period poses a threat to the na-
13 tional security or nonproliferation interests of the
14 United States.

15 (4) OTHER INFORMATION.—The Secretary and
16 the Secretary of Defense shall make available to any
17 committee or subcommittee of Congress of appro-
18 priate jurisdiction, upon request of the chairperson
19 or the ranking minority member of such committee
20 or subcommittee, all documents, including the appli-
21 cation contained in the file, related to any case
22 record compiled in accordance with this subsection.

23 **SEC. 112. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

24 (a) VIOLATIONS BY UNITED STATES PERSONS.—

25 (1) NONDISCRETIONARY SANCTIONS.—

1 (A) DETERMINATION BY THE PRESI-
2 DENT.—The President shall impose the applica-
3 ble sanctions described in subparagraph (B), if
4 the President determines that a United States
5 person knowingly—

6 (i) exports, transfers, or otherwise en-
7 gages in the trade of any item on the
8 MTCR Annex, in violation of the provi-
9 sions of section 38 or chapter 7 of the
10 Arms Export Control Act, section 105 of
11 this title, or any regulations or orders is-
12 sued under any such provisions;

13 (ii) conspires or attempts to engage in
14 such export, transfer, or trade; or

15 (iii) facilitates such export, transfer,
16 or trade by any other person.

17 (B) SANCTIONS APPLICABLE.—The sanc-
18 tions that apply to a United States person
19 under subparagraph (A) are as follows:

20 (i) CATEGORY II ITEMS.—If the item
21 on the MTCR Annex involved in the ex-
22 port, transfer, or trade is missile equip-
23 ment or technology within category II of
24 the MTCR Annex, the President shall deny
25 to such United States person, for a period

1 of 2 years, licenses for the transfer of mis-
2 sile equipment or technology controlled
3 under this title.

4 (ii) CATEGORY I ITEMS.—If the item
5 on the MTCR Annex involved in the ex-
6 port, transfer, or trade is missile equip-
7 ment or technology within category I of the
8 MTCR Annex, the President shall deny to
9 such United States person, for a period of
10 not less than 2 years, all export licenses
11 for items controlled under this title.

12 (2) DISCRETIONARY SANCTIONS.—In the case
13 of any determination referred to in paragraph (1),
14 the President may pursue any other appropriate
15 penalties under this section.

16 (3) WAIVER.—The President may waive the im-
17 position of sanctions under paragraph (1) on a Unit-
18 ed States person with respect to a product or service
19 if the President certifies to the Congress that—

20 (A) the product or service is essential to
21 the national security of the United States; and

22 (B) such person is a sole source supplier of
23 the product or service, the product or service is
24 not available from any alternative reliable sup-
25 plier, and the need for the product or service

1 cannot be met in a timely manner by improved
2 manufacturing processes or technological devel-
3 opments.

4 (b) VIOLATIONS BY FOREIGN PERSONS.—

5 (1) NONDISCRETIONARY SANCTIONS.—

6 (A) DETERMINATION BY THE PRESI-
7 DENT.—Subject to paragraphs (3) through (7),
8 the President shall impose on a foreign person
9 the applicable sanctions under subparagraph
10 (B) if the President has made a determination
11 with respect to that foreign person under sec-
12 tion 73(a) of the Arms Export Control Act, or
13 if a foreign person, after the date of enactment
14 of this Act, knowingly—

15 (i) exports, transfers, or otherwise en-
16 gages in the trade of any MTCR equip-
17 ment or technology that contributes to the
18 design, development, or production of mis-
19 siles in a country that is not an MTCR ad-
20 herent and would be, if it were United
21 States-origin equipment or technology,
22 subject to the jurisdiction of the United
23 States under this title;

24 (ii) conspires to or attempts to engage
25 in such export, transfer, or trade; or

1 (iii) facilitates such export, transfer,
2 or trade by any other person.

3 (B) SANCTIONS APPLICABLE.—The sanc-
4 tions that apply to a foreign person under sub-
5 paragraph (A) are as follows:

6 (i) CATEGORY II ITEMS.—If the item
7 involved in the export, transfer, or trade is
8 within category II of the MTCR Annex,
9 then the President shall deny, for a period
10 of 2 years, licenses for the transfer to such
11 foreign person of missile equipment or
12 technology controlled under this title.

13 (ii) CATEGORY I ITEMS.—If the item
14 involved in the export, transfer, or trade is
15 within category I of the MTCR Annex,
16 then the President shall deny, for a period
17 of not less than 2 years, licenses for the
18 transfer to such foreign person of items
19 controlled under this title.

20 (iii) ADDITIONAL AUTHORITY.—If, in
21 addition to actions taken under clause (i)
22 or (ii), the President determines that the
23 export, transfer, or trade has substantially
24 contributed to the design, development, or
25 production of missiles in a country that is

1 not an MTCR adherent, the President
2 shall prohibit, for a period of not less than
3 2 years, the importation into the United
4 States of products produced by that for-
5 eign person.

6 (2) INAPPLICABILITY WITH RESPECT TO MTCR
7 ADHERENTS.—Paragraph (1) does not apply with
8 respect to—

9 (A) any export, transfer, or trading activ-
10 ity that is authorized by the laws of an MTCR
11 adherent, if such authorization is not obtained
12 by misrepresentation or fraud; or

13 (B) any export, transfer, or trade of an
14 item to an end user in a country that is an
15 MTCR adherent.

16 (3) EFFECT OF ENFORCEMENT ACTIONS BY
17 MTCR ADHERENTS.—If an MTCR adherent is taking
18 judicial or other enforcement action against a person
19 with respect to acts described in paragraph (1), or
20 that person has been found by the government of an
21 MTCR adherent to be innocent of wrongdoing with
22 respect to such acts, sanctions may not be imposed
23 under paragraph (1) on that person with respect to
24 those acts or, if such sanctions are in effect against

1 a person due to such acts, such sanctions shall be
2 terminated.

3 (4) ADVISORY OPINIONS.—The Secretary, in
4 consultation with the Secretary of State and the
5 Secretary of Defense, may, upon the request of any
6 person, issue an advisory opinion to that person as
7 to whether a proposed activity would subject that
8 person to sanctions under this subsection. Any per-
9 son who relies in good faith on an advisory opinion
10 that states that a proposed activity would not sub-
11 ject a person to sanctions under this subsection, and
12 any person who thereafter engages in such activity,
13 may not be made subject to such sanctions due to
14 such activity.

15 (5) WAIVER AND REPORT TO CONGRESS.—

16 (A) IN GENERAL.—In any case, other than
17 one in which an advisory opinion has been is-
18 sued under paragraph (4) stating that a pro-
19 posed activity would not subject a person to
20 sanctions under this subsection, the President
21 may waive the imposition of sanctions under
22 paragraph (1) on a person with respect to a
23 product or service if the President—

1 (i) certifies to the Congress that the
2 product or service is essential to the na-
3 tional security of the United States and—

4 (I) such person is a sole source
5 supplier of the product or service;

6 (II) the product or service is not
7 available from any alternative reliable
8 supplier; and

9 (III) the need for the product or
10 service cannot be met in a timely
11 manner by improved manufacturing
12 processes or technological develop-
13 ments; or

14 (ii) determines that such waiver is es-
15 sential to the national security of the Unit-
16 ed States.

17 (B) NOTIFICATION.—In the event that the
18 President intends to waive sanctions in accord-
19 ance with subparagraph (A), the President shall
20 notify the Congress of the intended waiver not
21 less than 20 business days before issuing the
22 waiver. Such notification shall include a report
23 fully articulating the rationale and cir-
24 cumstances in support of the waiver.

1 (6) WAIVER FOR CERTAIN ITEMS.—The Presi-
2 dent shall not apply the sanction under this sub-
3 section prohibiting the importation of the products
4 of a foreign person—

5 (A) in the case of procurement of defense
6 articles or defense services—

7 (i) under existing contracts or sub-
8 contracts, including the exercise of options
9 for production quantities to satisfy require-
10 ments essential to the national security of
11 the United States;

12 (ii) if the President determines that—

13 (I) the person to which the sanc-
14 tions would be applied is a sole source
15 supplier of the defense articles and
16 services;

17 (II) the defense articles or serv-
18 ices are essential to the national secu-
19 rity of the United States; and

20 (III) alternative sources are not
21 readily or reasonably available; or

22 (iii) if the President determines that
23 such articles or services are essential to the
24 national security of the United States

1 under defense coproduction agreements or
2 NATO Programs of Cooperation;

3 (B) to products or services provided under
4 contracts entered into before the date on which
5 the President publishes the intention to impose
6 the sanctions; or

7 (C) to—

8 (i) spare parts;

9 (ii) component parts, but not finished
10 products, essential to United States prod-
11 ucts or production;

12 (iii) routine services and maintenance
13 of products, to the extent that alternative
14 sources are not readily or reasonably avail-
15 able; or

16 (iv) information and technology essen-
17 tial to United States products or produc-
18 tion.

19 (7) DEFINITION OF PERSON.—For purposes of
20 this subsection, if it is impossible to identify a spe-
21 cific foreign person or foreign governmental entity,
22 this subsection shall apply to—

23 (A) all activities of the foreign government
24 relating to the development or production of
25 any missile equipment or technology; and

(B) all activities of that foreign government affecting the development or production of aircraft, electronics, and space systems or equipment.

SEC. 113. CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c)(1) if the President determines that a foreign person, on or after the date of enactment of this Act, has knowingly and materially contributed to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this title; or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or tech-

1 nology, subject to the jurisdiction of the United
2 States under this title.

3 (2) COUNTRIES, PROJECTS, OR ENTITIES RE-
4 CEIVING ASSISTANCE.—Paragraph (1) applies in the
5 case of—

6 (A) any foreign country that the President
7 determines has, at any time after January 1,
8 1980—

9 (i) used chemical or biological weap-
10 ons in violation of international law;

11 (ii) used lethal chemical or biological
12 weapons against its own nationals; or

13 (iii) made substantial preparations to
14 engage in the activities described in clause
15 (i) or (ii);

16 (B) any foreign country, the government of
17 which is determined for purposes of section
18 105(d)(3), to be a government that has repeat-
19 edly provided support for acts of international
20 terrorism; or

21 (C) any other foreign country, project, or
22 entity designated by the President for purposes
23 of this section.

24 (3) PERSONS AGAINST WHICH SANCTIONS ARE
25 TO BE IMPOSED.—Sanctions shall be imposed on—

1 (A) the foreign person with respect to
2 which the President makes the determination
3 described in paragraph (1);

4 (B) any successor entity to that foreign
5 person;

6 (C) any foreign person that is a parent
7 company or subsidiary of that foreign person if
8 that parent company or subsidiary knowingly
9 assisted in the activities that were the basis of
10 that determination; and

11 (D) any foreign person that is an affiliate
12 of that foreign person if that affiliate knowingly
13 assisted in the activities that were the basis of
14 that determination and if that affiliate is con-
15 trolled in fact by that foreign person.

16 (b) CONSULTATIONS WITH AND ACTIONS BY FOR-
17 EIGN GOVERNMENT OF JURISDICTION.—

18 (1) CONSULTATIONS.—If the President makes
19 the determinations described in subsection (a)(1)
20 with respect to a foreign person, the President
21 should initiate consultations immediately with the
22 government with primary jurisdiction over that for-
23 eign person with respect to the imposition of sanc-
24 tions pursuant to this section.

1 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
2 TION.—In order to pursue such consultations with
3 the government referral to in paragraph (1), the
4 President may delay imposition of sanctions pursu-
5 ant to this section for a period of not more than 90
6 days. Following such consultations, the President
7 shall impose sanctions, unless the President deter-
8 mines and certifies to the Congress that that govern-
9 ment has taken specific and effective actions, includ-
10 ing appropriate penalties, to terminate the involve-
11 ment of the foreign person in the activities described
12 in subsection (a)(1). The President may delay im-
13 position of sanctions for an additional period of not
14 more than 90 days if the President determines and
15 certifies to the Congress that that government is in
16 the process of taking the actions described in the
17 preceding sentence.

18 (3) REPORT TO CONGRESS.—The President
19 shall report to the Congress, not later than 90 days
20 after making a determination under subsection
21 (a)(1), on the status of consultations with the appro-
22 priate government under this subsection, and the
23 basis for any determination under paragraph (2)
24 that such government has taken specific corrective
25 actions.

1 (c) SANCTIONS.—

2 (1) DESCRIPTION OF SANCTIONS.—The sanc-
3 tions to be imposed pursuant to subsection (a)(1)
4 are, except as provided in paragraph (2), as follows:

5 (A) PROCUREMENT SANCTION.—The Unit-
6 ed States shall not procure, or enter into any
7 contract for the procurement of, any goods or
8 services from any person described in sub-
9 section (a)(3).

10 (B) IMPORT SANCTIONS.—The importation
11 into the United States of products produced by
12 any person described in subsection (a)(3) shall
13 be prohibited.

14 (2) EXCEPTIONS.—The President shall not be
15 required to apply or maintain sanctions under this
16 section—

17 (A) in the case of procurement of defense
18 articles or defense services—

19 (i) under existing contracts or sub-
20 contracts, including the exercise of options
21 for production quantities to satisfy United
22 States operational military requirements;

23 (ii) if the President determines that
24 the person or other entity to which the
25 sanctions would otherwise be applied is a

1 sole source supplier of the defense articles
2 or services, that the defense articles or
3 services are essential, and that alternative
4 sources are not readily or reasonably avail-
5 able; or

6 (iii) if the President determines that
7 such articles or services are essential to the
8 national security under defense
9 coproduction agreements;

10 (B) to products or services provided under
11 contracts entered into before the date on which
12 the President publishes the intention to impose
13 sanctions;

14 (C) to—

15 (i) spare parts;

16 (ii) component parts, but not finished
17 products, essential to United States prod-
18 ucts or production; or

19 (iii) routine servicing and mainte-
20 nance of products, to the extent that alter-
21 native sources are not readily or reason-
22 ably available;

23 (D) to information and technology essen-
24 tial to United States products or production; or

25 (E) to other humanitarian items.

1 (d) TERMINATION OF SANCTIONS.—The sanctions
2 imposed pursuant to this section shall apply for a period
3 of not less than 12 months following the date of imposition
4 of sanctions, and shall cease to apply thereafter only if
5 the President determines and certifies to the Congress
6 that reliable information indicates that the foreign person
7 with respect to which the determination was made under
8 subsection (a)(1) has ceased to aid or abet any foreign
9 government, project, or entity in its efforts to acquire
10 chemical or biological weapons capability, as described in
11 that subsection.

12 (e) WAIVER OF SANCTIONS.—

13 (1) CRITERION FOR WAIVER.—The President
14 may waive the application of any sanction imposed
15 on any person pursuant to this section, after the end
16 of the 12-month period beginning on the date on
17 which that sanction was imposed, if the President
18 determines and certifies to the Congress that such
19 waiver is important to the national security interests
20 of the United States.

21 (2) NOTIFICATION OF AND REPORT TO CON-
22 GRESS.—If the President waives sanctions in accord-
23 ance with paragraph (1), the President shall so no-
24 tify the Congress not less than 20 days before the
25 waiver takes effect. Such notification shall include a

1 report fully articulating the rationale and cir-
2 cumstances that led the President to exercise the
3 waiver authority.

4 **SEC. 114. ANNUAL REPORT.**

5 (a) CONTENTS.—Not later than March 1 of each
6 year, the Secretary shall submit to the Congress a report
7 on the administration of this title during the preceding
8 calendar year. All agencies shall cooperate with the Sec-
9 retary in providing information for such report. Such re-
10 port shall include detailed information on—

11 (1) the implementation of the policies set forth
12 in section 102(b), including—

13 (A) delegations of authority by the Presi-
14 dent, as provided in section 104(d);

15 (B) consultations with the technical advi-
16 sory committees;

17 (C) any changes in the exercise of the au-
18 thorities contained in sections 105, 106, and
19 107; and

20 (D) any action taken by the President and
21 the Secretary to carry out the antiboycott poli-
22 cies set forth in paragraphs (9) and (10) of sec-
23 tion 102(b);

24 (2) adjustments to multilateral export controls,
25 activities involving the license free zones authorized

1 by section 105(b)(8), and determinations under sec-
2 tion 105(b)(7), the criteria used to make such deter-
3 minations, the removal of any export controls under
4 paragraphs (7) and (8) of section 105(b), and any
5 evidence demonstrating a need to maintain export
6 controls notwithstanding foreign availability;

7 (3) determinations made under section 105(e)
8 and the rationale for such determinations;

9 (4) the effectiveness of unilateral export con-
10 trols imposed under section 105, and any adjust-
11 ments, thereto and embargoes imposed, maintained,
12 or removed in accordance with section 105, including
13 descriptions of each embargo and the rationale for
14 imposing, maintaining, or removing such embargoes;

15 (5) short supply controls and monitoring in ac-
16 cordance with section 106;

17 (6) organizational and procedural changes un-
18 dertaken in furtherance of the policies set forth in
19 this title, including changes to increase the efficiency
20 of the export licensing process and to fulfill the re-
21 quirements of section 108, including an accounting
22 of appeals received, and actions taken pursuant
23 thereto under section 108(i);

1 (7) violations under section 109, enforcement
2 activities under section 110, and any reviews under-
3 taken in furtherance of the policies of this title;

4 (8) the issuance and revision of regulations
5 under this title, including an explanation of each
6 case in which regulations were not issued in accord-
7 ance with section 111(c)(1);

8 (9) the results, in as much detail as may be in-
9 cluded, consistent with multilateral arrangements
10 and the need to maintain the confidentiality of pro-
11 prietary information and classified information, of
12 the reviews of the Control List, and any revisions to
13 the Control List resulting from such reviews con-
14 ducted under section 104(f), including all elements
15 specified in section 104(f)(2)(B);

16 (10) any action taken to carry out section
17 104(i);

18 (11) the imposition or removal of sanctions
19 against certain entities and foreign countries in ac-
20 cordance with sections 112 and 113;

21 (12) any efforts to keep United States industry
22 informed with respect to procedures adopted under
23 this title; and

24 (13) the assessments required under section
25 105 of the effectiveness of multilateral regimes, por-

1 tions of which may be provided on a confidential
2 basis, as necessary.

3 (b) REPORT ON CERTAIN EXPORT CONTROLS.—To
4 the extent that the President determines that the policies
5 set forth in section 102(b) require the control of the export
6 of items other than those subject to multilateral controls,
7 or require more stringent controls than those imposed by
8 the relevant multilateral regime, the President shall in-
9 clude in each annual report the reasons for the need to
10 impose, or to continue to impose, such controls and the
11 estimated domestic economic impact on the various indus-
12 tries affected by such controls.

13 **SEC. 115. EFFECTS ON OTHER ACTS.**

14 (a) COMMODITY JURISDICTION.—

15 (1) INCLUSION AND CONTROL.—Notwithstand-
16 ing any other provision of law, no item may be in-
17 cluded on both the Control List and the United
18 States Munitions List, after the publication of the
19 lists required under paragraph (4) and the resolu-
20 tion of any dispute with respect to such lists under
21 paragraph (5).

22 (2) ELIMINATION OF OVERLAPPING CON-
23 TROLS.—Notwithstanding any other provision of
24 law—

1 (A) an item that is specifically designed,
2 developed, configured, adapted, or modified for
3 military or intelligence application shall be sub-
4 ject to control under the Arms Export Control
5 Act and not under this title; and

6 (B) except as provided in paragraph (3),
7 an item that is not specifically designed, devel-
8 oped, configured, adapted, or modified for mili-
9 tary or intelligence application shall be subject
10 to control under this title and not under the
11 Arms Export Control Act.

12 (3) DETERMINATION BY THE PRESIDENT.—An
13 item that is not specifically designed, developed, con-
14 figured, adapted, or modified for military or intel-
15 ligence application may be subject to control under
16 the Arms Export Control Act only if the President—

17 (A) determines that extraordinary cir-
18 cumstances exist affecting the national security
19 of the United States, which require that the
20 item be controlled under the Arms Export Con-
21 trol Act; and

22 (B) not later than 10 days after making
23 the determination under subparagraph (A),
24 submits a report to the Speaker of the House
25 of Representatives and the President pro tem-

1 pore of the Senate, describing in detail the rea-
2 sons for the determination, in appropriate clas-
3 sified form, as necessary.

4 (4) PUBLICATION OF LISTS.—

5 (A) IN GENERAL.—

6 (i) TIME OF PUBLICATION.—Not later
7 than 3 months after the date of enactment
8 of this subsection, the Secretary shall pub-
9 lish the Control List and the Secretary of
10 State shall publish the United States Mu-
11 nitions List, with all revisions that have
12 been made in accordance with this sub-
13 section.

14 (ii) ITEMS CONTROLLED UNDER THE
15 ARMS EXPORT CONTROL ACT.—Not later
16 than 3 months after the date of enactment
17 of this Act, the Secretary of State shall
18 publish in a separate list, those items re-
19 maining subject to control under the Arms
20 Export Control Act under paragraphs (2)
21 and (3).

22 (B) REMOVAL OF ITEM NOT PUBLISHED.—

23 If either the Secretary or the Secretary of State
24 fails to publish a revised list in accordance with
25 subparagraph (A)(i), there shall be excluded

1 from the list of the Secretary that did not so
2 publish a revised list, any item included on the
3 list of the Secretary that did so publish a re-
4 vised list.

5 (5) DISPUTE RESOLUTION.—

6 (A) REFERRAL.—The Secretary or the
7 Secretary of State (as the case may be) shall
8 refer the matter and any relevant information
9 to the other Secretary if—

10 (i) the Secretary or the Secretary of
11 State receives a request to determine
12 whether an item is subject to control under
13 this title or the Arms Export Control Act;

14 (ii) either Secretary finds that an item
15 is included on both the Control List and
16 the United States Munitions List;

17 (iii) an item appearing on the list of
18 one Secretary under paragraph (4)(A)(i) is
19 considered by the other Secretary to be
20 under the jurisdiction of that other Sec-
21 retary; or

22 (iv) the Secretary disagrees with the
23 inclusion of an item on the list published
24 under paragraph (4)(A)(ii).

1 (B) INITIAL PERIOD TO RESOLVE DIS-
2 PUTE.—The Secretary and the Secretary of
3 State shall have a period of 15 days beginning
4 on the date of the referral of a matter under
5 subparagraph (A) to resolve any differences
6 with respect to the matter involved.

7 (C) FINAL DECISION BY THE PRESI-
8 DENT.—If the Secretary and the Secretary of
9 State fail to resolve such differences within the
10 15-day period specified in subparagraph (B), ei-
11 ther Secretary may refer the matter to the
12 President who, not later than 15 days after re-
13 ceiving the referral, shall notify the two Sec-
14 retaries of the President’s determination on the
15 matter in dispute.

16 (D) WAIVER OF DISPUTE.—In the event
17 that either the Secretary or the Secretary of
18 State does not respond to a referral under sub-
19 paragraph (A) by the other Secretary, the Sec-
20 retary that did not so respond shall be deemed
21 to concur with the other Secretary on the mat-
22 ter involved.

23 (b) RULE OF CONSTRUCTION.—Except as otherwise
24 provided in this title, nothing contained in this title shall
25 be construed to modify, repeal, supersede, or otherwise af-

1 fect the provisions of any other laws authorizing control
2 over exports of any commodity.

3 (c) AMENDMENTS TO THE INTERNATIONAL EMER-
4 GENCY ECONOMIC POWERS ACT.—

5 (1) EXPIRED LEGISLATIVE AUTHORITY.—Sec-
6 tion 207 of the International Emergency Economic
7 Powers Act (50 U.S.C. 1706) is amended—

8 (A) by redesignating subsections (c) and
9 (d) as subsections (d) and (e), respectively; and

10 (B) by inserting after subsection (b) the
11 following new subsection:

12 “(c) EXPIRED LEGISLATIVE AUTHORITY.—

13 “(1) IN GENERAL.—The President may use the
14 authority of this Act to extend or reinstate an ex-
15 pired provision of law for only one period of not
16 more than 180 days after the date of such expira-
17 tion, unless the President submits a declaration of
18 emergency requiring such extension or reinstatement
19 for more than 180 days to the Congress and the
20 Congress approves such use of authority, as provided
21 in paragraph (3).

22 “(2) INTRODUCTION OF AUTHORIZING LEGISLA-
23 TION.—

24 “(A) IN GENERAL.—In any case in which
25 the President has invoked the authority of this

1 Act to extend or reinstate an expired provision
2 of law, a bill providing a simple extension of the
3 expired legislative authority for a period of not
4 less than 180 days shall be introduced in each
5 House of Congress as follows:

6 “(i) HOUSE OF REPRESENTATIVES.—

7 In the House of Representatives, the bill
8 shall be introduced by the chairman of the
9 appropriate committee of jurisdiction, for
10 the chairman and the ranking minority
11 member of the committee, or by the Mem-
12 bers of the House designated by the chair-
13 man and ranking minority member.

14 “(ii) SENATE.—In the Senate, the bill

15 shall be introduced by the Majority Leader
16 of the Senate, for the Majority Leader and
17 the Minority Leader of the Senate, or by
18 Members of the Senate designated by the
19 Majority Leader and the Minority Leader
20 of the Senate.

21 “(iii) TIMING.—The bills shall be in-

22 troduced not later than 10 calender days
23 after the President’s action under para-
24 graph (1) or, if either House is not in ses-
25 sion at the end of such period, on the first

1 day thereafter on which that House is in
2 session.

3 “(B) PROCEDURES FOR INTRODUCTION
4 AND COMMITTEE CONSIDERATION.—

5 “(i) BILL PROVIDING A SIMPLE EX-
6 TENSION OF AUTHORITY DEFINED.—For
7 purposes of this subsection, the term ‘a bill
8 providing a simple extension of expired leg-
9 islative authority’ means a bill that pro-
10 vides exclusively for the termination of
11 statutory authority, not less than 180 days
12 following the date of enactment of such
13 legislation.

14 “(ii) REFERRAL TO COMMITTEE.—
15 Any bill described in this subparagraph
16 that is introduced in the House of Rep-
17 resentatives or the Senate shall be referred
18 to the appropriate committees of jurisdic-
19 tion in that House.

20 “(iii) DISCHARGE FROM COMMIT-
21 TEE.—If the committee of either House to
22 which a bill described in this paragraph
23 has been referred has not reported such
24 bill, or any other bill on the same matter,
25 at the end of 60 days after the bill’s refer-

1 ral, the committee shall be discharged from
2 further consideration of the original bill.

3 “(C) NO EFFECT ON PRESIDENTIAL AU-
4 THORITY.—The failure of either or both Houses
5 to pass any bill described in this paragraph
6 shall have no effect on any extension or rein-
7 statement of an expired provision of law by the
8 President under paragraph (1).

9 “(3) PROCEDURE FOR EXTENDING EMERGENCY
10 AUTHORITY.—

11 “(A) PROPOSAL REQUIRED.—If the Presi-
12 dent determines that extension of an expiring
13 provision of law beyond the 180 days provided
14 in paragraph (1) is necessary to the national se-
15 curity, foreign policy, or economy of the United
16 States, the President shall, not later than 120
17 days after the date on which the President ex-
18 tends or reinstates a provision of law under
19 paragraph (1) or, if on that date the Congress
20 has recessed, adjourned to a date certain, or
21 adjourned sine die, then not later than 5 days
22 after the Congress comes back into session,
23 submit to the Congress—

24 “(i) a declaration of emergency ex-
25 plaining any unusual and extraordinary

1 threat, which has its source in whole or
 2 substantial part outside of the United
 3 States, to the national security, foreign
 4 policy, or economy of the United States
 5 that justifies extension of any expiring
 6 statutory authority; and

7 “(ii) a proposal to extend the expiring
 8 authority for not more than 1 year.

9 “(B) REQUIREMENT FOR CONGRESSIONAL
 10 APPROVAL.—The proposed extension of author-
 11 ity shall not take effect unless the Congress,
 12 not later than 60 calendar days after receiving
 13 the report, enacts a joint resolution approving
 14 the extension.

15 “(C) PROCEDURES FOR INTRODUCTION
 16 AND COMMITTEE CONSIDERATION.—

17 “(i) JOINT RESOLUTION DEFINED.—
 18 For purposes of this paragraph, the term
 19 ‘joint resolution’ means only a joint resolu-
 20 tion the matter after the resolving clause
 21 of which is as follows: ‘That the President
 22 is authorized to continue to exercise the
 23 authority of the _____, for
 24 a period of ____ days, as proposed in the
 25 submission of the President of

1 _____', with the blank
2 spaces being filled with the appropriate ci-
3 tations of lapsed legislative authority, time
4 period, and date of the submission of the
5 proposal.

6 “(ii) INTRODUCTION.—On the day on
7 which a proposal is submitted to the House
8 of Representatives and the Senate under
9 subparagraph (A), a joint resolution with
10 respect to the proposed extension shall be
11 introduced—

12 “(I) in the House of Representa-
13 tives (by request) by the chairman of
14 the appropriate committee of jurisdic-
15 tion, for the chairman and the rank-
16 ing minority member of the commit-
17 tee, or by the Members of the House
18 designated by the chairman and rank-
19 ing minority member; and

20 “(II) in the Senate (by request)
21 by the Majority Leader of the Senate,
22 for the Majority Leader and the Mi-
23 nority Leader of the Senate, or Mem-
24 bers of the Senate designated by the

1 Majority Leader and the Minority
2 Leader of the Senate.

3 “(iii) SUBMISSION WHILE NOT IN SES-
4 SION.—If the other House is not in session
5 on the day on which the proposal is sub-
6 mitted, the joint resolution shall be intro-
7 duced on the first day thereafter on which
8 that House is in session.

9 “(iv) REFERRAL TO COMMITTEE.—
10 Any joint resolution introduced under this
11 paragraph in the House of Representatives
12 or the Senate shall be referred to the ap-
13 propriate committee of jurisdiction.

14 “(v) DISCHARGE FROM COMMITTEE.—
15 If the committee of either House to which
16 a joint resolution has been referred under
17 this paragraph has not reported the joint
18 resolution at the end of 30 days after its
19 referral, the committee shall be discharged
20 from further consideration of the joint res-
21 olution and of any other joint resolution
22 introduced with respect to the same mat-
23 ter.

24 “(D) CONGRESSIONAL ACTION NOT RE-
25 QUIRED.—If the legislative authority extended

1 or reinstated under the authority of this sub-
2 section is extended or reinstated by legislation
3 passed in accordance with paragraph (2) or any
4 other provision of law for a period longer than
5 that proposed by the President under subpara-
6 graph (A)(ii) prior to the expiration of the 60-
7 day period described in subparagraph (B), then
8 no further action on any joint resolution de-
9 scribed in this paragraph is required, and the
10 procedures of subparagraph (C) are waived.

11 “(4) FLOOR CONSIDERATION OF BILLS AND
12 JOINT RESOLUTIONS.—

13 “(A) PROCEDURES.—Any bill or joint reso-
14 lution described in subparagraph (B) shall be
15 considered in the Senate in accordance with
16 section 601(b) of the International Security As-
17 sistance and Arms Export Control Act of 1976.
18 For the purpose of expediting the consideration
19 and enactment of such bill or joint resolution
20 under this subsection, a motion to proceed to
21 the consideration of any such bill or joint reso-
22 lution after it has been reported by the appro-
23 priate committee shall be treated as highly priv-
24 ileged in the House of Representatives.

1 “(B) AFFECTED BILLS AND JOINT RESO-
2 LUTIONS.—

3 “(i) IN GENERAL.—The procedures in
4 subparagraph (A) shall apply to—

5 “(I) any bill in the form de-
6 scribed in paragraph (2)(B)(i) and
7 discharged from committee as pro-
8 vided in paragraph (2)(B)(iii); and

9 “(II) any joint resolution de-
10 scribed in paragraph (3)(C)(i) or any
11 other joint resolution with respect to
12 the same matter discharged from
13 committee as provided in paragraph
14 (3)(C)(v).

15 “(ii) EXCEPTION.—Any bill on the
16 same matter as a bill described in para-
17 graph (2)(B)(i) that is reported from com-
18 mittee in a form other than as described in
19 that paragraph shall be considered in the
20 House of Representatives and the Senate
21 under normal legislative procedures.

22 “(C) BILL OR JOINT RESOLUTION RE-
23 CEIVED FROM OTHER HOUSE.—In the case of a
24 bill in the form described in paragraph
25 (2)(B)(i) or a joint resolution described in para-

1 graph (3)(C)(i), if, before the passage by 1
2 House of such a bill or joint resolution of that
3 House, that House receives such a bill or joint
4 resolution with respect to the same matter from
5 the other House, then—

6 “(i) the procedure in that House shall
7 be the same as if no bill or joint resolution
8 had been received from the other House;
9 but

10 “(ii) the vote on final passage shall be
11 on the bill or joint resolution of the other
12 House.

13 “(D) COMPUTING TIME PERIODS.—In com-
14 puting the time periods referred to in para-
15 graphs (2)(B)(iii), (3)(B), and (3)(C)(v), there
16 shall be excluded the days on which either
17 House of Congress is not in session because of
18 an adjournment of more than 3 days to a day
19 certain or because of an adjournment of the
20 Congress sine die.”.

21 (2) CONFIDENTIALITY OF INFORMATION.—The
22 International Emergency Economic Powers Act (50
23 U.S.C. 1701 et seq.) is amended by adding at the
24 end the following new section:

1 **“SEC. 209. CONFIDENTIALITY OF INFORMATION.**

2 “(a) EXEMPTIONS FROM DISCLOSURE.—Information
3 obtained under this Act may be withheld only to the extent
4 permitted by statute, except that information submitted,
5 obtained or considered in connection with an application
6 for an export license or other export authorization under
7 this Act, including the export license or other export au-
8 thorization itself, classification requests, information ob-
9 tained during the course of a foreign availability assess-
10 ment, information or evidence obtained in the course of
11 any investigation, and information obtained or furnished
12 in connection with multilateral agreements, treaties, or ob-
13 ligations under this Act shall not be subject to disclosure
14 under section 552 of title 5, United States Code, and shall
15 be withheld from public disclosure unless the release of
16 such information is determined by the Secretary to be in
17 the national interest.

18 “(b) INFORMATION TO CONGRESS AND GAO.—

19 “(1) IN GENERAL.—Nothing in this Act shall
20 be construed as authorizing the withholding of infor-
21 mation from the Congress or from the General Ac-
22 counting Office.

23 “(2) AVAILABILITY TO THE CONGRESS.—

24 “(A) IN GENERAL.—All information ob-
25 tained at any time under this Act regarding the
26 control of exports, including any report or li-

1 cense application required under this Act, shall
2 upon request be made available to the Commit-
3 tee on Foreign Affairs and the Subcommittee
4 on International Economic Policy and Trade of
5 the House of Representatives and the Commit-
6 tee on Banking, Housing, and Urban Affairs
7 and the Subcommittee on International Finance
8 and Monetary Policy of the Senate. The com-
9 mittees and subcommittees referred to in the
10 preceding sentence may not provide other Mem-
11 bers of Congress information obtained under
12 this paragraph except upon a finding under
13 subparagraph (B) that such information may be
14 disclosed.

15 “(B) PROHIBITION ON FURTHER DISCLO-
16 SURE.—No committee or subcommittee de-
17 scribed in subparagraph (A), or member there-
18 of, and no other committee, subcommittee, or
19 Member of Congress shall disclose any informa-
20 tion obtained under this Act or previous Acts
21 regarding the control of exports that is submit-
22 ted pursuant to this subsection unless one of
23 the full committees listed in subparagraph (A)
24 determines that the withholding of that infor-
25 mation is contrary to the national interest.

1 “(3) AVAILABILITY TO THE GAO.—

2 “(A) IN GENERAL.—Notwithstanding para-
3 graph (1), information referred to in subpara-
4 graph (B) shall, consistent with the protection
5 of intelligence, counterintelligence, and law en-
6 forcement sources, methods, and activities, as
7 determined by the agency that originally ob-
8 tained the information, and consistent with the
9 provisions of section 716 of title 31, United
10 States Code, be made available only by the
11 agency that originally obtained the information,
12 upon request, to the Comptroller General of the
13 United States or to any officer or employee of
14 the General Accounting Office authorized by
15 the Comptroller General of the United States to
16 have access to such information.

17 “(B) PROHIBITION ON FURTHER DISCLO-
18 SURES.—No officer or employee of the General
19 Accounting Office shall disclose, except to the
20 Congress in accordance with this subsection,
21 any information that is submitted on a con-
22 fidential basis and from which any individual
23 can be identified.

24 “(c) PENALTIES FOR DISCLOSURE OF CONFIDEN-
25 TIAL INFORMATION.—Any officer or employee of the

1 United States, or any department or agency thereof, who
 2 publishes, divulges, discloses, or makes known in any man-
 3 ner, or to any extent not authorized by law, any informa-
 4 tion coming to such officer, employee, department, or
 5 agency, in the course of employment or official duties, or
 6 by reason of any examination, investigation, report,
 7 record, or file of such officer, employee, department, or
 8 agency, which is exempt from disclosure under this sub-
 9 section, shall—

10 “(1) be fined not more than \$10,000, or impris-
 11 oned not more than one year, or both;

12 “(2) may be removed from office or employment
 13 (in the case of an officer or employee); and

14 “(3) shall be subject to a civil penalty of not
 15 more than \$10,000.”.

16 (3) ADDITIONAL AMENDMENTS.—Section 206
 17 of the International Emergency Economic Powers
 18 Act (50 U.S.C. 1705) is amended—

19 (A) in subsection (a), by inserting “, or at-
 20 tempts to violate,” after “violates”; and

21 (B) in subsection (b), by inserting “, or
 22 willfully attempts to violate,” after “violates”.

23 (d) CIVIL AIRCRAFT EQUIPMENT.—Except as nec-
 24 essary to comply with international obligations under the
 25 International Emergency Economic Powers Act or the

1 United Nations Participation Act of 1945, and notwith-
2 standing any other provision of law, a product shall be
3 subject to export controls exclusively under this title if it
4 is a product that—

5 (1) is certified by the Federal Aviation Admin-
6 istration, to be standard equipment in civil aircraft
7 and is an integral part of such aircraft; and

8 (2) is to be exported to a country, other than
9 a target country.

10 (e) EFFECT ON SECTION 38(e) OF THE ARMS EX-
11 PORT CONTROL ACT.—This title modifies provisions of the
12 Export Administration Act of 1979, which are incor-
13 porated by reference in section 38(e) of the Arms Export
14 Control Act (22 U.S.C. 2778(e)). The amendments made
15 to such provisions shall have no effect on the administra-
16 tion and enforcement of section 38(e) of the Arms Export
17 Control Act. The relevant provisions of the Export Admin-
18 istration Act of 1979, shall continue to have the same
19 force and effect as they had on the day before the expira-
20 tion of the Export Administration Act of 1979 for pur-
21 poses of the Arms Export Control Act.

22 **SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) IN GENERAL.—There are authorized to be appro-
24 priated to the Department to carry out this title—

25 (1) \$43,372,000 for fiscal year 1995;

1 (2) such amounts as may be necessary for fiscal
2 year 1996; and

3 (3) such additional amounts for each of fiscal
4 years 1995 and 1996 as may be necessary for in-
5 creases in salary, pay, retirement, other employee
6 benefits authorized by law, and other non-discre-
7 tionary costs.

8 (b) FUNDING FOR ELECTRONIC INFORMATION SYS-
9 TEM.—There are authorized to be appropriated to the De-
10 partment to carry out subsection (m) of section 108—

11 (1) \$2,000,000 for fiscal year 1995; and

12 (2) such sums as may be necessary for each of
13 fiscal years 1996 and 1997.

14 **SEC. 117. EFFECTIVE DATE.**

15 (a) IN GENERAL.—This title shall become effective
16 upon the expiration of the Export Administration Act of
17 1979, and shall remain in effect until January 1, 1999.

18 (b) REPEAL OF 1979 ACT.—Upon the effective date
19 of this title, the Export Administration Act of 1979 is re-
20 pealed.

21 **SEC. 118. SAVINGS PROVISIONS.**

22 (a) IN GENERAL.—All delegations, rules, regulations,
23 orders, determinations, licenses, sanctions, or other forms
24 of administrative action that have been made, issued, con-
25 ducted, or allowed to become effective under the Export

1 Control Act of 1949, the Export Administration Act of
2 1969, the Export Administration Act of 1979, or the Arms
3 Export Control Act, and which are in effect on the date
4 on which this title becomes effective, shall continue in ef-
5 fect according to their terms until modified, superseded,
6 set aside, or revoked under this title or the Arms Export
7 Control Act.

8 (b) ADMINISTRATIVE PROCEEDINGS.—This title shall
9 not apply to any administrative proceedings commenced
10 or any application for a license made, under the Export
11 Administration Act of 1979, which is pending on the effec-
12 tive date of this title.

13 **SEC. 119. CONFORMING AMENDMENTS.**

14 (a) AGRICULTURAL REFERENCES.—

15 (1) AGRICULTURAL COMMODITIES.—Section
16 1133(a)(3) of the Food Security Act of 1985 (7
17 U.S.C. 1736y(3)) is amended by inserting “of 1994”
18 after “Export Administration Act”.

19 (2) TRADE SUSPENSION RESERVES.—Section
20 208(a) of the Agricultural Act of 1980 (7 U.S.C.
21 4001(a)) is amended by striking “Export Adminis-
22 tration Act of 1979” and inserting “Export Admin-
23 istration Act of 1994”.

24 (3) AGRICULTURAL EMBARGO PROTECTION.—
25 Section 411(a)(1) of the Agricultural Trade Act of

1 1978 (7 U.S.C. 5671(a)(1)) is amended by striking
2 “Export Administration Act of 1979 (50 U.S.C.
3 App. 2401 et seq.)” and inserting “Export Adminis-
4 tration Act of 1994”.

5 (b) DEFENSE REFERENCES.—

6 (1) PUBLIC DISCLOSURE OF CERTAIN TECH-
7 NICAL DATA.—Section 130(a) of title 10, United
8 States Code, is amended by striking “Export Admin-
9 istration Act of 1979 (50 U.S.C. App. 2401–2420)”
10 and inserting “Export Administration Act of 1994”.

11 (2) DEFENSE CONTRACTS.—

12 (A) CONSIDERATION OF NATIONAL SECU-
13 RITY OBJECTIVES.—Section 2327 of title 10,
14 United States Code, is amended—

15 (i) in subsection (a), by striking “sec-
16 tion 6(j)(1)(A) of the Export Administra-
17 tion Act of 1979 (50 U.S.C. App.
18 2405(j)(1)(A))” and inserting “section
19 105(d)(3)(A) of the Export Administration
20 Act of 1994”; and

21 (ii) in subsection (b)(2), by striking
22 “section 6(j)(1)(A) of the Export Adminis-
23 tration Act of 1979 (50 U.S.C. App.
24 2405(j)(1)(A))” and inserting “section

1 105(d)(3)(A) of the Export Administration
2 Act of 1994”.

3 (B) PROHIBITION ON CERTAIN CON-
4 TRACTS.—Section 2410i(a) of title 10, United
5 States Code, is amended by striking “section
6 3(5)(A) of the Export Administration Act of
7 1979 (50 U.S.C. App. 2402(5)(A))” and insert-
8 ing “section 102(b)(9) of the Export Adminis-
9 tration Act of 1994”.

10 (C) DISPOSITION OF PRODUCTS.—Section
11 7430(e) of title 10, United States Code, is
12 amended—

13 (i) by striking “Export Administration
14 Act of 1979 (50 U.S.C. App. 2401 et
15 seq.)” and inserting “Export Administra-
16 tion Act of 1994”; and

17 (ii) by striking “Export Administra-
18 tion Act of 1979” each place it appears
19 and inserting “Export Administration Act
20 of 1994”.

21 (c) EXPORT OF SEMICONDUCTOR MANUFACTUR-
22 ING.—Section 275 of the National Defense Authorization
23 Act for Fiscal Years 1988 and 1989 (15 U.S.C. 4605)
24 is amended by striking “Export Administration Act of

1 1979 (50 U.S.C. App. 2401 et seq.)” and inserting “Ex-
2 port Administration Act of 1994”.

3 (d) EXPORT OF UNPROCESSED TIMBER.—Section
4 499 of the Forest Resources Conservation and Shortage
5 Relief Act of 1990 (16 U.S.C. 620j) is amended—

6 (1) in the section heading, by striking “**OF**
7 **1979**” and inserting “**OF 1994**”; and

8 (2) by striking “section 7 of the Export Admin-
9 istration Act of 1979” and inserting “section 106 of
10 the Export Administration Act of 1994”.

11 (e) CRIMINAL VIOLATIONS.—

12 (1) AGENTS OF FOREIGN GOVERNMENTS.—Sec-
13 tion 951(e)(2)(B) of title 18, United States Code, is
14 amended by striking “section 11 of the Export Ad-
15 ministration Act of 1979” and inserting “section
16 109 of the Export Administration Act of 1994”.

17 (2) LAUNDERING OF MONETARY INSTRU-
18 MENTS.—Section 1956(c)(7)(D) of title 18, United
19 States Code, is amended by striking “section 11 (re-
20 lating to violations) of the Export Administration
21 Act of 1979” and inserting “section 109 (relating to
22 violations) of the Export Administration Act of
23 1994”.

24 (f) FOREIGN RELATIONS.—

1 (1) RELATIONS WITH THE PEOPLE’S REPUBLIC
2 OF CHINA.—Section 902(a) of the Foreign Relations
3 Authorization Act, Fiscal Years 1990 and 1991 (22
4 U.S.C. 2151 note) is amended—

5 (A) in paragraph (4), by striking “section
6 6(k) of the Export Administration Act of 1979”
7 and inserting “section 105(d) of the Export Ad-
8 ministration Act of 1994”;

9 (B) in paragraph (6)(A)(i), by striking
10 “Export Administration Act of 1979” and in-
11 serting “Export Administration Act of 1994”;
12 and

13 (C) in paragraph (7)(A), by striking “Ex-
14 port Administration Act of 1979” and inserting
15 “Export Administration Act of 1994”.

16 (2) HUMAN RIGHTS AND SECURITY ASSIST-
17 ANCE.—Section 502B(a)(2) of the Foreign Assist-
18 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
19 ed—

20 (A) by striking “Export Administration
21 Act of 1979 for” and inserting “Export Admin-
22 istration Act of 1994 for”; and

23 (B) by striking “Export Administration
24 Act of 1979).” and inserting “Export Adminis-
25 tration Act of 1994)”.

1 (3) TORTURE BY FOREIGN GOVERNMENTS.—
2 Section 2(c) of the Joint Resolution entitled “Joint
3 Resolution regarding the implementation of the pol-
4 icy of the United States Government in opposition to
5 the practice of torture by any foreign government”,
6 approved October 4, 1984 (22 U.S.C. 2656 note) is
7 amended by striking “Export Administration Act of
8 1979” and inserting “Export Administration Act of
9 1994”.

10 (4) ANNUAL REPORT ON THE PROLIFERATION
11 OF MISSILES AND ESSENTIAL COMPONENTS OF NU-
12 CLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS.—
13 Section 1097(c)(7) of the National Defense Author-
14 ization Act for Fiscal Years 1992 and 1993 (22
15 U.S.C. 2751 note) is amended by striking “section
16 11B(b)(4) of the Export Administration Act of 1979
17 (50 U.S.C. App. 2401b(b)(4))” and inserting “sec-
18 tion 112(b)(4) of the Export Administration Act of
19 1994”.

20 (5) CONTROL OF ARMS EXPORTS AND IM-
21 PORTS.—Section 38 of chapter 3 of the Foreign
22 Military Sales Act (22 U.S.C. 2778) is amended—
23 (A) in subsection (e)—

24 (i) in the first sentence, by striking
25 “subsections (c), (d), (e), and (g) of sec-

tion 11” and all that follows through “of such Act,” and inserting the following: “subsections (b), (c), (e), and (f) of section 109 of the Export Administration Act of 1994, and by sections 110(a) and 111(d) of that Act,”; and

(ii) in the third sentence, by striking “section 11(c) of the Export Administration Act of 1979” and inserting “section 109(c) of the Export Administration Act of 1994”;

(B) in subsection (f), by striking “Export Administration Act of 1979” and inserting “Export Administration Act of 1994”; and

(C) by striking subsection (g)(1)(A)(ii) and inserting the following:

“(ii) section 109 of the Export Administration Act of 1994,”.

(6) EXPORTATION OF URANIUM DEPLETED IN THE ISOTOPE 235.—Section 110 of the International Security and Development Cooperation Act of 1980 (22 U.S.C. 2778a) is amended by striking “Export Administration Act of 1979” and inserting “Export Administration Act of 1994”.

(7) ARMS EXPORT CONTROL ACT.—

1 (A) TRANSACTIONS WITH COUNTRIES SUP-
2 PORTING ACTS OF INTERNATIONAL TERROR-
3 ISM.—Section 40(k) of chapter 3 of the Arms
4 Export Control Act (22 U.S.C. 2780(k)) is
5 amended—

6 (i) by striking “sections 11(c), 11(e),
7 11(g), and 12(a) of the Export Adminis-
8 tration Act of 1979” and inserting “sec-
9 tions 109(b), 109(c), 109(f), and 110(a) of
10 the Export Administration Act of 1994”;
11 and

12 (ii) by striking “notwithstanding sec-
13 tion 11(c)” and inserting “notwithstanding
14 section 109(c)”.

15 (B) CONTROL OF MISSILES AND MISSILE
16 EQUIPMENT OR TECHNOLOGY.—Chapter 7 of
17 the Arms Export Control Act (22 U.S.C. 2797
18 et seq.) is amended—

19 (i) in section 72(a)(1)(A), by striking
20 “section 5 or 6 of the Export Administra-
21 tion Act of 1979 (50 U.S.C. App. 2404,
22 2405)” and inserting “section 105 of the
23 Export Administration Act of 1994”; and

24 (ii) in section 74(6), by striking “sec-
25 tion 16(2) of the Export Administration

1 Act of 1979 (50 U.S.C. App. 2415(2))”
2 and inserting “section 103 of the Export
3 Administration Act of 1994”.

4 (C) CHEMICAL OR BIOLOGICAL WEAPONS
5 PROLIFERATION.—Section 81(a)(1)(C) of chap-
6 ter 8 of the Arms Export Control Act (22
7 U.S.C. 2798(a)(1)(C)) is amended by striking
8 “Export Administration Act of 1979” and in-
9 serting “Export Administration Act of 1994”.

10 (8) REPORT ON CONFIDENCE BUILDING MEAS-
11 URES BY POLAND AND HUNGARY.—Section 702(2)
12 of the Support for East European Democracy
13 (SEED) Act of 1989 (22 U.S.C. 5472(2)) is amend-
14 ed by striking “Export Administration Act of 1979”
15 and inserting “Export Administration Act of 1994”.

16 (9) UNITED STATES EXPORT CONTROLS.—Sec-
17 tion 304(a)(2) of the Chemical and Biological Weap-
18 ons Control and Warfare Elimination Act of 1991
19 (22 U.S.C. 5603(2)) is amended by striking “Export
20 Administration Act of 1979” and inserting “Export
21 Administration Act of 1994”.

22 (10) SUPPORT FOR THE CUBAN PEOPLE.—Sec-
23 tion 1705(a) of the Cuban Democracy Act of 1992
24 (22 U.S.C. 6004(a)) is amended by striking “Export

1 Administration Act of 1979” and inserting “Export
2 Administration Act of 1994”.

3 (g) INTERNAL REVENUE CODE OF REFERENCES.—

4 (1) SECTION 901.—Section 901(j)(2)(A)(iv) of
5 the Internal Revenue Code of 1986 is amended by
6 striking “section 6(j) of the Export Administration
7 Act of 1979” and inserting “section 105(d)(3) of the
8 Export Administration Act of 1994”.

9 (2) SECTION 927.—Section 927(a)(2)(D) of the
10 Internal Revenue Code of 1986 is amended by strik-
11 ing “paragraph (2)(C) of section 3 of the Export
12 Administration Act of 1979” and inserting “section
13 102(b)(1)(E) of the Export Administration Act of
14 1994”.

15 (3) SECTION 993.—Section 993(c)(2)(D) of the
16 Internal Revenue Code of 1986 is amended by strik-
17 ing “section 7(a) of the Export Administration Act
18 of 1979 to effectuate the policy set forth in para-
19 graph (2)(C) of section 3 of such Act” and inserting
20 “section 106(a) of the Export Administration Act of
21 1994 to effectuate the policy set forth in section
22 102(b)(1)(E) of that Act”.

23 (h) RIGHTS-OF-WAY FOR PIPELINES THROUGH
24 FEDERAL LANDS.—Section 28(u) of the Mineral Leasing
25 Act (30 U.S.C. 185(u)) is amended—

1 (1) by striking “Export Administration Act of
2 1979 (50 U.S.C. App. 2401 and following)” and in-
3 serting “Export Administration Act of 1994”; and

4 (2) by striking “Export Administration Act of
5 1979” each place it appears and inserting “Export
6 Administration Act of 1994”.

7 (i) ENERGY CONSERVATION.—

8 (1) DOMESTIC USE OF ENERGY SUPPLIES AND
9 RELATED MATERIALS AND EQUIPMENT.—Section
10 103 of the Energy Policy and Conservation Act (42
11 U.S.C. 6212) is amended—

12 (A) in subsection (c)—

13 (i) by striking “Export Administration
14 Act of 1979” and inserting “Export Ad-
15 ministration Act of 1994”; and

16 (ii) by striking “section 3(2)(C)” and
17 inserting “section 102(b)(1)(E)”; and

18 (B) in subsection (e)(3), by striking “Ex-
19 port Administration Act of 1969” and inserting
20 “Export Administration Act of 1994”.

21 (2) EXCHANGE OF INFORMATION.—Section
22 254(e) of the Energy Policy and Conservation Act
23 (42 U.S.C. 6274(e)) is amended by striking para-
24 graph (3) and inserting the following:

1 “(3) section 110 of the Export Administration
2 Act of 1994;”.

3 (j) IRAQ SANCTIONS.—Section 586G of the Iraq
4 Sanctions Act of 1990 (50 U.S.C. 1701 note) is amend-
5 ed—

6 (1) by striking subsection (a)(3) and inserting
7 the following:

8 “(3) EXPORTS OF CERTAIN GOODS AND TECH-
9 NOLOGY.—The authorities of section 105 of the Ex-
10 port Administration Act of 1994 shall be used to
11 prohibit the export to Iraq of any goods or tech-
12 nology listed pursuant to that section on the control
13 lists established under subsections (f) and (i) of sec-
14 tion 104 of that Act.”; and

15 (2) in subsection (b), by striking “subsection
16 (m)(1) of section 6 of the Export Administration Act
17 of 1979” and inserting “section 111(h)(1) of the
18 Export Administration Act of 1994”.

19 **TITLE II—ENVIRONMENTAL EX-**
20 **PORT PROMOTION ACT OF**
21 **1994**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Environmental Export
24 Promotion Act of 1994”.

1 **SEC. 202. PROMOTION OF UNITED STATES ENVIRON-**
2 **MENTAL EXPORTS.**

3 (a) ENVIRONMENTAL TECHNOLOGIES TRADE ADVI-
4 SORY COMMITTEE.—Section 2313 of the Export Enhance-
5 ment Act of 1988 (15 U.S.C. 4728) is amended—

6 (1) by striking subsection (d);

7 (2) by redesignating subsection (c) as sub-
8 section (e); and

9 (3) by inserting after subsection (b) the follow-
10 ing:

11 “(c) ENVIRONMENTAL TECHNOLOGIES TRADE ADVI-
12 SORY COMMITTEE.—

13 “(1) ESTABLISHMENT AND PURPOSE.—The
14 Secretary, in carrying out the duties of the chair-
15 person of the TPCC, shall establish the Environ-
16 mental Technologies Trade Advisory Committee
17 (hereafter in this section referred to as the ‘Commit-
18 tee’). The purpose of the Committee shall be to pro-
19 vide advice and guidance to the Working Group in
20 the development and administration of programs to
21 expand United States exports of environmental tech-
22 nologies, goods, and services.

23 “(2) MEMBERSHIP.—The members of the Com-
24 mittee shall be drawn from representatives of—

25 “(A) environmental businesses, including
26 small businesses;

1 “(B) trade associations in the environ-
2 mental sector;

3 “(C) private sector organizations involved
4 in the promotion of environmental exports;

5 “(D) States (as defined in section
6 2301(i)(5)) and associations representing the
7 States; and

8 “(E) other appropriate interested members
9 of the public.

10 The Secretary shall appoint as members of the Committee
11 at least 1 individual under each of subparagraphs (A)
12 through (E).

13 “(d) EXPORT PLANS FOR PRIORITY COUNTRIES.—

14 “(1) PRIORITY COUNTRY IDENTIFICATION.—

15 The Working Group, in consultation with the Com-
16 mittee, shall annually assess which foreign countries
17 have markets with the greatest potential for the ex-
18 port of United States environmental technologies,
19 goods, and services. Of these countries the Working
20 Group shall select as priority countries 5 with the
21 greatest potential for the application of United
22 States Government export promotion resources relat-
23 ed to environmental exports.

24 “(2) EXPORT PLANS.—The Working Group, in
25 consultation with the Committee, shall annually cre-

1 ate a plan for each priority country selected under
2 paragraph (1), setting forth in detail ways to in-
3 crease United States environmental exports to such
4 country. Each such plan shall—

5 “(A) identify the primary public and pri-
6 vate sector opportunities for United States ex-
7 porters of environmental technologies, goods,
8 and services in the priority country;

9 “(B) analyze the financing and other re-
10 quirements for major projects in the priority
11 country which will use environmental tech-
12 nologies, goods, and services, and analyze
13 whether such projects are dependent upon fi-
14 nancial assistance from foreign countries or
15 multilateral institutions; and

16 “(C) list specific actions to be taken by the
17 member agencies of the Working Group to in-
18 crease United States exports to the priority
19 country.”.

20 (b) ADDITIONAL MECHANISMS TO PROMOTE ENVI-
21 RONMENTAL EXPORTS.—Section 2313 of the Export En-
22 hancement Act of 1988 (15 U.S.C. 4728) is amended by
23 adding at the end the following new subsection:

1 “(f) ENVIRONMENTAL TECHNOLOGIES SPECIALISTS
2 IN THE UNITED STATES AND FOREIGN COMMERCIAL
3 SERVICE.—

4 “(1) ASSIGNMENT OF ENVIRONMENTAL TECH-
5 NOLOGIES SPECIALISTS.—The Secretary shall assign
6 a specialist in environmental technologies to the of-
7 fice of the United States and Foreign Commercial
8 Service in each of the 5 priority countries selected
9 under subsection (d)(1), and the Secretary is author-
10 ized to assign such a specialist to the office of the
11 United States and Foreign Commercial Service in
12 any country that is a promising market for United
13 States exports of environmental technologies, goods,
14 and services. Such specialist may be an employee of
15 the Department, an employee of any relevant United
16 States Government department or agency assigned
17 on a temporary or limited term basis to the Com-
18 merce Department, or a representative of the private
19 sector assigned to the Department of Commerce.

20 “(2) DUTIES OF ENVIRONMENTAL TECH-
21 NOLOGIES SPECIALISTS.—Each specialist assigned
22 under paragraph (1) shall provide export promotion
23 assistance to United States environmental busi-
24 nesses, including, but not limited to—

1 “(A) identifying factors in the country to
2 which the specialist is assigned that affect the
3 United States share of the domestic market for
4 environmental technologies, goods, and services,
5 including market barriers, standards-setting ac-
6 tivities, and financing issues;

7 “(B) providing assessments of assistance
8 by foreign governments that is provided to pro-
9 ducers of environmental technologies, goods,
10 and services in such countries in order to en-
11 hance exports to the country to which the spe-
12 cialist is assigned, the effectiveness of such as-
13 sistance on the competitiveness of United
14 States products, and whether comparable Unit-
15 ed States assistance exists;

16 “(C) training Foreign Commercial Service
17 Officers in the country to which the specialist
18 is assigned, other countries in the region, and
19 United States and Foreign Commercial Service
20 offices in the United States, in environmental
21 technologies and the international environ-
22 mental market;

23 “(D) providing assistance in identifying
24 potential customers and market opportunities in
25 the country to which the specialist is assigned;

1 “(E) providing assistance in obtaining nec-
2 essary business services in the country to which
3 the specialist is assigned;

4 “(F) providing information on environ-
5 mental standards and regulations in the coun-
6 try to which the specialist is assigned; and

7 “(G) providing information on all United
8 States Government programs that could assist
9 the promotion, financing, and sale of United
10 States environmental technologies, goods, and
11 services in the country to which the specialist is
12 assigned.

13 “(g) ENVIRONMENTAL TRAINING IN ONE-STOP
14 SHOPS.—In addition to the training provided under sub-
15 section (f)(2)(C), the Secretary shall establish a mecha-
16 nism to train—

17 “(1) Commercial Service Officers assigned to
18 the one-stop shops provided for in section
19 2301(b)(8), and

20 “(2) Commercial Service Officers assigned to
21 district offices in districts having large numbers of
22 environmental businesses,
23 in environmental technologies and in the international en-
24 vironmental marketplace, and ensure that such officers re-
25 ceive appropriate training under such mechanism. Such

1 training may be provided by officers or employees of the
2 Department of Commerce, and other United States Gov-
3 ernment departments and agencies, with appropriate ex-
4 pertise in environmental technologies and the international
5 environmental workplace, and by appropriate representa-
6 tives of the private sector.

7 “(h) ENVIRONMENTAL TECHNOLOGIES PROJECT AD-
8 VOCACY CALENDAR AND INFORMATION DISSEMINATION
9 PROGRAM.—The Working Group shall—

10 “(1) maintain a calendar, updated at the end of
11 each calendar quarter, of significant opportunities
12 for United States environmental businesses in for-
13 eign markets and trade promotion events, which
14 shall—

15 “(A) be made available to the public;

16 “(B) identify the 50 to 100 environmental
17 infrastructure and procurement projects in for-
18 eign markets that have the greatest potential in
19 the calendar quarter for United States exports
20 of environmental technologies, goods, and serv-
21 ices; and

22 “(C) include trade promotion events, such
23 as trade missions and trade fairs, in the envi-
24 ronmental sector; and

1 “(2) provide, through the National Trade Data
 2 Bank and other information dissemination channels,
 3 information on opportunities for environmental busi-
 4 nesses in foreign markets and information on Fed-
 5 eral export promotion programs.

6 “(i) ENVIRONMENTAL TECHNOLOGY EXPORT ALLI-
 7 ANCES.—Subject to the availability of appropriations for
 8 such purpose, the Secretary shall explore the use of the
 9 Market Development Cooperator Program to support the
 10 creation of private sector, nonprofit organizations, and
 11 university alliances that support the export of environ-
 12 mental technologies.

13 “(j) DEFINITION.—For purposes of this section, the
 14 term ‘environmental business’ means a business that pro-
 15 duces environmental technologies, goods, or services.”.

S 2203 PCS—2

S 2203 PCS—3

S 2203 PCS—4

S 2203 PCS—5

S 2203 PCS—6

S 2203 PCS—7

S 2203 PCS—8

S 2203 PCS—9

S 2203 PCS—10

S 2203 PCS—11

S 2203 PCS—12

S 2203 PCS—13

S 2203 PCS—14

S 2203 PCS—15

Calendar No. 474

103D CONGRESS
2D SESSION

S. 2203

[Report No. 103-288]

A BILL

To improve the administration of export controls,
and for other purposes.

JUNE 16 (legislative day, JUNE 7), 1994

Placed on the calendar